

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



London N. Breed
Mayor

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Director

PRESERVATION AND SEISMIC SAFETY (PASS) PROGRAM REGULATIONS

The purpose of these Program Regulations (the “**Regulations**”) is to implement the Preservation and Seismic Safety Program (“**PASS**” or the “**Program**”) for the City and County of San Francisco (the “**City**”). Chapter 66 of the City’s Administrative Code (“**Chapter 66**”) delegates to the Mayor’s Office of Housing and Community Development (“**MOHCD**”) the authority to promulgate these Regulations for the purpose of ensuring efficient and transparent administration of the Program.

1. GENERAL INFORMATION

- 1.1. **Defined Terms.** Any capitalized terms not defined herein have the meanings given in Chapter 66. 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. **Effective Date, Amendments.** These Regulations are effective as of March 15, 2019 and may be amended at the discretion of the Director of MOHCD (the “**Director**”). Any such amendments shall be drafted in consultation with the City Attorney’s Office and shall 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. **Publication.** The Director shall 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 shall provide these Regulations to persons requesting a written copy hereof.
- 1.4. **Source and Availability of Funds.** The funds used to provide Loans under the Program are held in the Preservation and Seismic Safety Program Fund established pursuant to Chapter 66 (the “**Fund**”). The Fund is capitalized with (a) proceeds of general obligation bonds issued from time to time by the City (the “**Bonds**”), (b) certain payments received in connection with loans of Bond proceeds under the Program (“**Loans**”), and (c) net proceeds of any Secondary Market Transfers as described in §11 below. These funds may be issued directly to Borrowers (as defined in §2.2 below) in the form of Loans or may be used to take out interim sources of Loan funds (e.g., lines of credit or bond anticipation notes).
- 1.5. **Term Sheet.** The contents of these Regulations are summarized for reference in the term sheet attached hereto as **EXHIBIT A**.

2. LOAN TERMS AND CONDITIONS

All Loans shall be either Market Rate Loans (“**MR Loans**”), Below Market Rate Loans (“**BMR Loans**”), or Deferred Loans (as such term is defined in Chapter 66, “**Deferred Loans**”), each of which shall be structured and administered as described below. For the purposes of these Regulations, “**Property**” means any legal parcel(s) of real property and improvements eligible for a Loan under the Program, and subject to a Declaration of Restrictions, as provided hereunder, 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, improvement, and/or rehabilitation of at-risk multi-unit residential buildings; (ii) the conversion of such buildings to permanent affordable housing; and (iii) financing the cost of needed seismic, fire, health, and safety upgrades or other major rehabilitation for habitability of such structures and for unreinforced masonry buildings. Proceeds of a Loan shall not be used to finance new construction of a building or acquisition of a building without improvement and/or rehabilitation of such building. Mixed-use Properties are eligible to receive Loans, provided that the majority of the improvements thereon (as determined by square footage or dollar value) are used for residential purposes. MOHCD may issue to a particular Property any number of MR Loans, BMR Loans, and Deferred Loans (as such term is defined in Chapter 66) in any combination thereof.

All residential units at Properties must fully conform with City Planning Code requirements applicable to the Property, including zoning, building code compliance, and any relevant neighborhood plan controls. Where there are tenants living in 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 for-profit or not-for-profit enterprises. However, MOHCD may grant preference to not-for-profit entities when allocating Loan funds. Also, 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. For the purposes of this §2.3, “**Cost of Funds**” for a given Loan means the true interest cost applicable to the Bond proceeds funding that Loan. MR Loans shall bear a rate of interest that, when coupled with the annual administrative fees charged by the City, yields a total return to the City that equals their Cost of Funds, plus 100 basis points. BMR Loans and Deferred Loans shall bear a rate of interest that yields at least one-third of their Cost of Funds.

MOHCD will maintain a list of estimated interest rates for Loans based on the true interest cost applicable to recent general obligation bond issuances and will provide rate locks and/or forward commitments for approved Loans as needed.

2.4. Loan Term, Amortization, Prepayments. Loans issued to finance a Project during the construction and/or stabilization phase (“**Acquisition/Construction Loans**”) shall mature and complete amortization no later than 36 months from the date upon which they are funded (“**Closing**”). Loans issued to finance a Project beyond such construction and/or stabilization phase

(“**Permanent Loans**”) shall mature and complete amortization no later than 40 years from Closing.

With the exception of Deferred Loans, all Permanent Loans shall be fully amortizing. Construction Loans may be structured with bullet maturities.

Prepayments of Acquisition/Construction Loans are subject to a prepayment penalty to be determined during the application process, while Permanent Loans may be prepaid subject to yield maintenance requirements (also determined during the application process) after 10 years or prepaid at par after 12 years.

2.5. Security, Lien Position. All Loans shall be fully secured by a first-position lien against the fee interest in the Property and any improvements financed with Loan proceeds. 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.

2.6. Additional City/OCII Funding. 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.

3. AFFORDABILITY RESTRICTIONS

For the purposes of these Regulations, “**Household**” means the tenant or tenants occupying a given unit at a Property, and income restrictions are stated in terms of Area Median Income (“**AMI**”), which means the area median income as published annually by MOHCD, derived 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 shall 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 Households earning no more than 120% of AMI at turnover, and (d) require that the Project’s combined average rents are no higher than 80% of AMI. MOHCD reserves the right to require deeper affordability (e.g., lower AMI caps) on any Property. The term of each Declaration of Restrictions shall be sufficient to ensure that units acquired, improved, or rehabilitated under the Program remain affordable (a) in the case of units financed by MR Loans, for the original term of the Loan (regardless of whether the Loan is prepaid) and (b) in the case of units financed by BMR Loans or Deferred Loans, for as long as all or any portion of the buildings financed with the Loan operate as multi-family residential facilities.

Notwithstanding the foregoing, for Properties financed by MR Loans with no current or previous funding from a BMR Loan or Deferred Loan, MOHCD may grant an exemption from the requirement to record a Declaration of Restrictions (an “**Exemption**”) if the Applicant executes a legally binding agreement to ensure that (a) the majority of any Loan proceeds will be used to finance the cost of needed seismic, fire, health, and safety upgrades or other major rehabilitation critical to maintaining habitability at the Property or (b) at the time of Closing and for at least ten years thereafter, the Property will be wholly owned and operated by a non-profit entity approved by MOHCD.

As a condition precedent to Loan approval, Borrowers of MR Loans for Properties not subject to City-imposed affordability restrictions must agree to refrain from passing through to tenants (as a capital

improvements rent increase or otherwise) the cost of rehabilitation efforts financed with funds from such Loans.

For Properties that have received a combination of MR Loan, BMR Loan or Deferred Loan financing, all affordability restrictions applicable to BMR Loans or Deferred Loans shall apply to the entire Property.

4. CITY CONTRACTING AND OTHER REQUIREMENTS

All Loans shall be subject to the requirements described below and explained in greater detail 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 state¹ 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 shall be incorporated into the Loan Documents.

4.2. Property/Liability Insurance. As a condition precedent to receipt of a Loan, the Borrower shall 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 shall 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 a relocation budget and a detailed relocation plan the provisions of which are consistent with the following:

- Residential tenants shall not incur costs related to relocation but will continue to pay rent for their original unit.
- The Borrower shall dedicate staff or provide a relocation consultant to provide advisory services to residential tenants during the relocation process.
- Notice shall be given to all tenants (residential and commercial) 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 units at the Project.
- In lieu of physical relocation, any commercial tenants shall be offered a temporary suspension of rent due plus a negotiated lump sum to ensure that the business is able to withstand relocation.
- Relocation and rent-concession agreements must be documented and signed by all applicable parties prior to commencement of construction.

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...”

5. PROGRAM COSTS

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

5.1. Underwriting Deposit. Upon submission of the application for a Loan described in §7.1 below (the “**Application**”), the Borrower must pay a non-refundable deposit in the amount of \$5,000 to cover the cost of the underwriting process (the “**Underwriting Deposit**”). If the Loan closes, MOHCD will deduct the amount of the Underwriting Deposit from the City’s Origination Fee collected at Closing (See §5.2 below). MOHCD may waive the required Underwriting Deposit for Projects receiving gap financing from the City or OCII.

The terms and conditions associated with MOHCD’s administration of the Underwriting Deposit (including provisions related to forfeiture) are further described in the Deposit and Indemnification Agreement associated with each Project.

5.2. 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.

5.3. City Attorney Expenses. The City Attorney’s Office bills MOHCD for staff time and resources associated with its work as lender counsel (“**CAO Expenses**”). 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.

5.4. Compliance Monitoring Fee. MOHCD charges an annual fee to monitor a Project’s compliance with the Loan Documents (the “**Compliance Monitoring Fee**”). The initial installment of the Compliance Monitoring Fee for all Projects, which must be paid in full at Closing to cover the first year of monitoring, is the greater of 0.05% (5 basis points) of the total Loan funds disbursed or \$2,500. Thereafter, the Compliance Monitoring Fee for the coming year for each Loan, which is due on the anniversary of the Closing date, is \$2,500. For Properties subject to City-imposed affordability restrictions, the Compliance Monitoring Fee is payable annually in advance for the duration of such restrictions. For Properties not subject to such restrictions, the Compliance Monitoring Fee is payable annually in advance through Loan maturity or prepayment. MOHCD will not refund any portion of a previously collected Compliance Monitoring Fee in the event of Loan prepayment.

5.5. Loan Servicing Fee. MOHCD charges an annual fee in the amount of \$2,500 to cover the cost of collecting and processing monthly Loan payments and conducting other Loan servicing functions (the “**Loan Servicing Fee**”). The first installment of the Loan Servicing Fee for all Projects, which covers the first year of servicing, must be paid in full at Closing. Thereafter, the Loan Servicing Fee for the coming year is due annually in advance on the anniversary of the Closing date through Loan maturity or prepayment. MOHCD will not refund any portion of a previously collected Loan Servicing Fee in the event of Loan prepayment. For MR Loans, the interest rate includes the cost of this fee (see §2.3 above).

5.6. Reimbursement and Indemnification. In exchange for participation in the Program, the Borrower must reimburse the City for expenses reasonably incurred in connection with preparation for Closing, including but not limited to: architectural and engineering review, appraisal and appraisal review, environmental review, inspections, documentation fees, legal fees (including CAO Expenses), mortgage taxes, transfer taxes, all recording costs and filing fees, all license and permit fees, and all title and other insurance premiums (collectively, “**City Expenses**”). For Loans that have closed, MOHCD assumes that City Expenses are reimbursed by the fees and charges collected pursuant to §§5.1-5.3 above and will not seek additional reimbursement for City Expenses from the Borrower. However, where a Loan has failed to close and MOHCD is no longer

committed to closing that Loan (e.g., a Loan declared null and void pursuant to §8 below), the Borrower must reimburse the City for City Expenses within 30 days after the City's written demand for the same.

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 shall apply to MOHCD's underwriting of Loans:

6.1. Enterprise Risk. MOHCD will assess each prospective Borrower's enterprise-level risk based on the entity's capacity for both project management and asset management. 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 shall 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. Loan-to-Value Ratio. 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) 90% of appraised value or (b) 80% 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. MOHCD reserves the right to decline an Application due to an unreasonable acquisition price. 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. Debt Service Coverage Ratio. All Projects must demonstrate, via a cash flow analysis covering the Loan term, a debt service coverage ratio (“DSC”) of at least 1.10x. DSC will be calculated by dividing net operating income, which is defined as Project revenue less expenses and required reserve deposits, by Loan payments.

6.5. Reserve Requirements. MOHCD requires all Projects to set aside reserves in separate interest-bearing accounts as described below.

6.5.1. 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).

6.5.2. 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 amounts listed in the following table:

Number of Units at the Project (including commercial units)	Per-Unit Per-Year Replacement Reserve Deposits (including commercial units)
<10	\$400
11-25	\$375
>25	\$350

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.

6.5.3. Capitalized Vacancy Reserves. In connection with Closing, Projects must reserve in a Vacancy Reserve Account an amount equal to the monthly rent for commercial and residential units that are vacant at acquisition multiplied by the number of months such units will remain vacant during predevelopment, rehabilitation, and marketing/lease-up.

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

6.6. Key Operating Assumptions. Key operating assumptions in the MOHCD pro forma operating budget for each Project include the following:

6.6.1. Vacancy Allowance. Budgets typically assume annual economic vacancy equal to 5% of residential rental income and 20% of commercial rental income. MOHCD may increase or decrease the residential vacancy percentage based on the five most recent years of audited financial data. MOHCD may reduce the commercial vacancy percentage to as low as 5% upon demonstration of a long-term, stable tenant and/or strong market conditions that would facilitate rapid lease-up should the commercial space become vacant; conversely, MOHCD may increase this percentage to account for a weak market.

6.6.2. Construction Contingency. 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.

6.6.3. 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.

7. LOAN APPROVAL PROCESS

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

7.1. Application. To initiate the Loan approval process, prospective Borrowers must submit an Application to MOHCD. Application information and forms shall 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;
- A Deposit and 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);
- A draft Distribution List with contact information for known transaction parties; and
- A check for the Underwriting Deposit as described in **§5.1** above.

7.2. Preliminary Approval/Denial. Following Application submission, MOHCD staff 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**”). 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 the City; (3) signify that the Project complies with the planning, zoning, subdivision, or building, laws or ordinances of the City; or (4) suggest that MOHCD, the City, or any officer or agent of MOHCD 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 shall 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 shall also be considered a Final Denial.

7.3. Final Approval/Denial. Following Preliminary Approval, Applications shall be submitted to the Loan Committee for evaluation and final approval or denial as described below. Regardless of whether an Application meets all of the eligibility criteria in these Regulations, the Loan Committee 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**”).

Notwithstanding the foregoing, with respect to Loans for Projects that have already received a funding commitment from MOHCD’s Small Sites Program (“**SSP**”), or any successor Acquisition Program (collectively with SSP, “**Acquisition Program**”), Final Approval or Final Denial may be issued pursuant to the Acquisition Program Guidelines.

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 shall 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 shall 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 shall 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 shall 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

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 66, and all other applicable federal, state, and local laws. The Compliance Monitoring Fee is intended to cover the cost of this monitoring for each Loan.

10. LOAN SERVICING

MOHCD will receive repayments of Loans, account for all such repayments, provide to the Director annual statements of such accounts for each outstanding Loan, and oversee all other administrative functions related to the maintenance of Loans prior to their maturity or prepayment (“**Loan Servicing**”). MOHCD may retain, from time to time, agents as desirable to conduct some or all of the Loan Servicing operations related to a specific Loan or pool of Loans. The Loan Servicing Fee is intended to cover the cost of Loan Servicing for each Loan, whether conducted by MOHCD or its agents.

11. SECONDARY MARKET TRANSFERS

The City may retain outstanding Loans as assets through their maturity or prepayment or may transfer such Loans to another entity (e.g., via whole-loan sales or securitization) (a “**Secondary Market Transfer**”). MOHCD shall, in consultation with the City Attorney’s Office and other outside advisors as needed, oversee any Secondary Market Transfers and shall ensure that the net proceeds of such transfers are disbursed in a manner consistent with these Regulations, Chapter 66, and other applicable laws and regulations.

12. 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 shall be granted through the written approval of the Director of MOHCD, in consultation with the Loan Committee.

EXHIBIT A

**PRESERVATION AND SEISMIC SAFETY (PASS)
PROGRAM TERM SHEET**

This program term sheet (the “Term Sheet”) summarizes key provisions of the Preservation and Seismic Safety Program Regulations (the “Regulations”) for the City and County of San Francisco (the “City”). The Regulations describe the terms and conditions applicable to the Preservation and Seismic Safety Program (“PASS” or the “Program”) administered by the Mayor’s Office of Housing and Community Development (“MOHCD”) on behalf of the City. In the case of discrepancies between this Term Sheet and the Regulations, the Regulations shall 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 to finance (i) the acquisition, improvement, and/or rehabilitation of at-risk multi-unit residential buildings; (ii) the conversion of such buildings to permanent affordable housing; and (iii) needed seismic, fire, health, and safety upgrades or other major rehabilitation for habitability of such structures. Loan proceeds <u>shall not</u> be used to finance new construction or acquisition of a building without substantial improvement and/or rehabilitation of such building. Mixed-use Properties are eligible to receive Loans, provided that the majority of the existing improvements thereon (as determined by square footage or dollar value) are used for residential purposes.	2.1
	Interest Rates	Market Rate Loans shall bear a rate of interest that, when coupled with the annual administrative fees charged by the City, yields a total return to the City that equals the true interest cost applicable to the Bond proceeds funding a given Loan, plus 100 basis points. Below Market Rate Loans and Deferred Loans shall bear a rate of interest that yields at least one-third of such true interest cost.	2.3
	Loan Term, Amortization, Prepayments	Acquisition/Construction Loans shall mature and complete amortization no later than 36 months from the date upon which they are funded (“Closing”). Permanent Loans shall mature no later than 40 years from Closing. With the exception of Deferred Loans, all Permanent Loans must complete amortization no later than 40 years from Closing. Prepayments of Construction Loans are subject to a prepayment penalty to be determined during the application process, while Permanent Loans may be prepaid subject to yield maintenance requirements after 10 years or prepaid at par after 12 years. In general, all Permanent Loans must be fully amortizing. Construction Loans may be structured with bullet maturities.	2.4
	Security, Lien Position	All Loans shall be fully secured by a first-position lien against the fee interest in the Property and any improvements financed with Loan proceeds. 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
Affordability Restrictions & Regulatory Requirements	Affordability Restrictions	In general, all Properties financed by Loans shall 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 Households earning no more than 120% of AMI at turnover, and (d) require that the Project’s combined average rents are no higher than 80% of AMI. The term of each DOR shall be sufficient to ensure that units remain affordable (a) in the case of Market Rate Loans (“MR Loans”), for the original term of the Loan and (b) in the case of Below Market Rate Loans or Deferred Loans , permanently. Borrowers of MR Loans may seek an exemption from the DOR requirement as described in §3 of the Regulations, but such Borrowers may not pass through to tenants the cost of renovations financed with such Loans. For Properties that have received a combination of MR Loan, BMR Loan, or Deferred Loan financing, all affordability restrictions applicable to BMR Loans or Deferred Loans shall apply to the entire Property.	3
	Contracting Requirements	Borrowers shall 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, and (d) the highest general prevailing rate of wages as determined in accordance with applicable City and state laws. These requirements are described in detail in EXHIBIT B of the Regulations.	4.1; Exh. B

	Insurance Requirements	Borrowers shall 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; Exh. C
	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 a detailed relocation budget/plan prior to Closing and cover all relocation-related costs. Borrowers must also compensate commercial tenants for construction-related disruptions.	4.3; 4.4
Program Costs	Underwriting Deposit	Borrowers must pay a non-refundable deposit in the amount of \$5,000. If the Loan closes, MOHCD will deduct the amount of this deposit from the City’s Origination Fee collected at Closing. MOHCD may waive the deposit for Projects receiving gap financing from the City or OCII.	5.1
	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.	5.2
	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 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.	5.3
	Compliance Monitoring Fee*	The initial installment of this fee for all Loans, which must be paid in full at Closing to cover the first year of monitoring, is the greater of 0.05% (5 basis points) of the total Loan funds disbursed or \$2,500. Thereafter, the fee for the coming year for each Loan, which is due on the anniversary of the Closing date, is \$2,500. For Properties subject to City-imposed affordability restrictions, the fee is payable annually in advance for the duration of the restrictions. For Properties not subject to such restrictions, the fee is payable annually in advance through Loan maturity or prepayment.	5.4
	Loan Servicing Fee*	The cost of this fee is \$2,500 annually in advance. The first installment of the fee for all Projects, which covers the first year of servicing, must be paid in full at Closing. Thereafter, the fee for the coming year is due on the anniversary of the Closing date through Loan maturity or prepayment.	5.5
	Reimbursement and Indemnification	The Borrower must reimburse the City for all expenses reasonably incurred in connection with preparation for Closing, including but not limited to: architectural and engineering review, appraisal and appraisal review, environmental review, inspections, documentation fees, legal fees (including CAO Expenses), mortgage taxes, transfer taxes, all recording costs and filing fees, all license and permit fees, and all title and other insurance premiums (collectively, “City Expenses”). For Loans that have closed, MOHCD assumes that City Expenses are reimbursed by the fees and charges described above and will not seek additional reimbursement. However, where a Loan has failed to close and MOHCD is no longer committed to closing that Loan, the Borrower must reimburse the City for City Expenses within 30 days after the City’s written demand for the same. The Borrower is also subject to certain indemnification requirements described in the Regulations and the Deposit and Indemnification Agreement.	5.6
Underwriting	Enterprise Risk	MOHCD will assess each prospective Borrower’s capacity for both project management and asset management. 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 staffing plans and demonstrate its ability to manage the financial performance and capital needs of its portfolio.	6.1
	Loan-to-Value Ratio	Projects must demonstrate, via a cash flow analysis covering the Loan term, a loan-to-value ratio that does not exceed the lesser of (a) 90% of appraised value or (b) 80% of total development costs.	6.3
	Debt Service Coverage Ratio	Projects must demonstrate, via a cash flow analysis covering the Loan term, a debt service coverage ratio of at least 1.10x.	6.4

*For Market Rate Loans, these fees are included in the interest rate (see “Interest Rates” above).

	Operating Reserves	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.	6.5.1
	Replacement Reserves	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 physical needs assessment ("PNA") (taking into account the scope of work planned in connection with Closing). MOHCD also 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 following per-unit amounts: <10 units = \$400, 11-25 units = \$375, >25 units = \$350.	6.5.2
	Vacancy Reserves and Allowance	Projects must reserve in a Vacancy Reserve Account an amount equal to the monthly rent for commercial and residential units that are vacant at acquisition multiplied by the number of months such units will remain vacant during predevelopment, rehabilitation, and marketing/lease-up. Subject to certain exceptions, budgets assume annual economic vacancy equal to 5% of residential rental income and 20% of commercial rental income.	6.5.3; 6.6.1
	Construction Contingency	Budgets must assume a contingency set-aside for construction costs equal to at least 15% of a Project's total construction budget.	6.6.2
	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.	6.6.3
Loan Approval Process	Application	To initiate the underwriting process, prospective Borrowers must submit an Application to MOHCD, 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); (f) a draft distribution list; and (g) a check for the Underwriting Deposit.	7.1
	Preliminary Approval/Denial	Following Application submission, MOHCD staff will review the Application for consistency with the 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"). 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 shall be considered final. Any appeals of Preliminary Denials must be submitted in writing; the Director's subsequent denial of any such appeal shall be considered final.	7.2
	Final Approval/Denial	Following Preliminary Approval, Applications will generally be submitted to the Citywide Affordable Housing Loan Committee (the "Loan Committee") for evaluation and final approval or denial. However, with respect to Loans for Projects that have already received a funding commitment from MOHCD's Small Sites Program ("SSP"), or any successor Acquisition Program (collectively with SSP, "Acquisition Program", final approval or denial may be issued pursuant to the Acquisition Program Guidelines.	7.3

EXHIBIT B

CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Regulatory Agreement as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit shall 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 shall be held in confidence and used only in performance of the Agreement. Owner shall 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 shall 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 shall 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 shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Owner shall 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 shall 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 shall 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 shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

4. **Nondiscrimination; Penalties.**

a. **Owner Shall 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 shall 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 shall require all Subcontractors to comply with such provisions. Owner's failure to comply with the obligations in this subsection shall 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 shall 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 shall 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 shall 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, shall 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 shall require the Subcontractor to comply with the requirements of the MCO and shall 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 shall 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 shall maintain employee and payroll records as required by the MCO. If Owner fails to do so, it shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Owner shall 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 shall 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 shall have no obligation to comply with part (a) above.

c. Owner's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall 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 shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Owner shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Owner shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall 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 shall 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 shall 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 shall 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 shall keep itself informed of the current requirements of the HCAO.

i. Owner shall 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 shall 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 shall 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 shall 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" shall 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" shall 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 shall 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 shall 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 shall 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 shall 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 shall maintain weekly certified payroll records for submission to the awarding department as required. The Owner shall be responsible for the submission of payroll records of its subcontractors. All certified payroll records shall 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 shall 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 One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) 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 One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) 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 shall 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 One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall 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 shall 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.

3. Commercial Space.

Borrower must require that all nonresidential tenants' liability insurance policies include Borrower and the City as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Project, Borrower must require commercial tenants to maintain insurance as follows:

(a) 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;

(b) with respect to any tenant who has (or is required by Law to have) a liquor license and who is selling or distributing alcoholic beverages and/or food products on the leased premises, to maintain liquor and/or food products liability coverage with limits not less than One Million Dollars (\$1,000,000), as appropriate;

(c) special form coverage insurance, including vandalism and malicious mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings, fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant and of persons claiming through the tenant; and

(d) full coverage plate glass insurance covering any plate glass on the commercial space.

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.