

CITY OF DALY CITY

Regular Meeting - CITY COUNCIL

AGENDA

Monday, February 12, 2024 - 7:00 PM

City Hall Council Chambers – 2nd Floor
City Hall 333 – 90th Street
Daly City, CA 94015

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1. To submit written comments by meeting day, please email cityclerk@dalycity.org and include “Public Comment” in the subject line. All written comments received by 4:00 pm on meeting day will be provided to the City Council prior to the meeting.

Please note: Any emailed comments received after 4:00 p.m. on the meeting date are not guaranteed to be received by the City Council prior to the meeting. Comments are not read aloud into the record.

2. During the meeting, you may visit www.dalycity.org/agendas to submit comments using the Public Comment form to address the City Council on a specific item, or during the public comment period, and such comments are delivered to the City Council and City Staff during the meeting, and may be read into the record at the time they are received.

3. To speak at the meeting in person, please complete a Speaker Card located at the entrance to the Council Chamber and submit it to a Staff Member as early in the meeting as possible.

Persons with disabilities who require auxiliary aids or services in attending or participating in this meeting should call the office of the City Clerk at (650) 991-8078 as soon as possible.

CALL TO ORDER:

PLEDGE TO THE FLAG:

ROLL CALL:

AVAILABILITY OF PUBLIC RECORDS:

All public record to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City Clerk’s Office, City Hall located at 333 90th Street, Daly City, CA during normal business hours, at the same time that the public records are distributed or made available to the legislative body.

PRESENTATIONS:

1. Age-Friendly Strategic Plan - Alfredo Vergara-Lobo, Principal, Vergara-Lobo Associates
2. Proclamation - Black History Month, Opal Fuller, Daly City Food Services Coordinator
3. DCPLA Grant to the Daly City Public Library, Clayton Koo, Director, Daly City Public Library Associates

APPROVAL OF MINUTES:

4. Regular Meeting of January 22, 2024

APPROVAL OF AGENDA:

PUBLIC APPEARANCES/ORAL COMMUNICATIONS:

NOTE: Speakers are limited to two minutes, unless modified by the Mayor. The Council cannot take action on any matter raised under this item.

CONSENT AGENDA

All items listed on the Consent Agenda are considered to be routine and may be approved by one roll call vote of the City Council. There shall be no separate discussion of the matters on the Consent Agenda unless requested by a member of the City Council. If discussion is required, that item will be removed from the Consent Agenda and will be considered separately at the end of the Agenda.

Resolutions:

5. Accept and Appropriate a \$10,300 Grant from the Daly City Public Library Associates
6. Resolution Authorizing State of California Cannabis Equity Act Grant Funding
7. Accept and Appropriate Fiscal Year 2024 Mid-Year Operating Budget Adjustments
8. Accept and Appropriate Fiscal Year 2024 Mid-Year Capital Improvement Program Budget Adjustments
9. Reallocation of PLHA funds to Midway Village

END OF CONSENT AGENDA

COMMUNICATIONS:

10. Resolution to Declare Loneliness a Public Health Crisis

STAFF: Leilani Ramos

RECOMMENDATION: Adopt Resolution by Roll Call Vote

11. City Council Vacancy and Discussion of Next Steps

STAFF: Rose Zimmerman

RECOMMENDATION: Information Only
Council Determination

ORDINANCES:

12. Second Reading, Ordinance No. 1470, Amending Title 6 of the Daly City Municipal Code Re: Animal Control

STAFF: Rose Zimmerman

RECOMMENDATION: Adopt Ordinance by Roll Call Vote

APPOINTMENTS: Board/Commission Membership Committee Appointments

REPORTS:

13. Council Committee

14. City Council

15. Staff

ADJOURNMENT:

Proclamation

BLACK HISTORY MONTH 2024

- WHEREAS,** February is officially celebrated as **Black History Month** to honor the achievements of African Americans in general, as well as their ongoing role in the development of the United States, and their contributions to the City of Daly City in particular; and
- WHEREAS,** in 1926 historian and author Dr. Carter G. Woodson, who is known as the father of Black History Studies, introduced Negro History Week to resist racism and to highlight the role Blacks have played in the development of civilization; and
- WHEREAS,** in 1992, the City of Daly City began honoring African Americans by observing Juneteenth, the oldest known celebration commemorating the ending of slavery in the United States, and over time, the Juneteenth commemoration grew into a celebration of Black History Month; and
- WHEREAS,** African Americans residing in Daly City have contributed to the betterment of our community through their skills, volunteerism, strength and vitality, civic pride, business ventures, artistic and music expressions, and art instruction, by way of visual arts, recorded and live music, and other cultural evolution breakthroughs; and
- WHEREAS,** this year, 2024, the national theme is “Black Americans & The Arts” which spotlights the insurmountable palette of strengths from which Black artists have used art to preserve history and community memory, and artistic and cultural movements such as the New Negro, Black Renaissance (1920s & 30s), Black Arts Movement (1960s), and Hip-Hop (birthed 1973 – Bronx, New York).
- WHEREAS,** in honoring Black History, life, and culture in America, Daly City will host its annual event with this year’s theme being, “Kustawi!” meaning “Thrive On!”, while featuring history and artifacts by the Domini Hoskins Black History Pop-Up Museum, Black artists, music presentations by The Kalimba King, Carl Winters, art display by Daly City art instructor Al Olson and other event treats including soulful southern appetizers, and community presentations. The community is invited to this free event, which will be held Saturday February 24, 2024, from 11:00am – 1:30pm, at Daly City’s City Hall.

NOW, THEREFORE, I, JUSLYN C. MANALO, Mayor, and members of the City Council of Daly City, do hereby proclaim February 2024 as **BLACK HISTORY MONTH** in Daly City and encourage all citizens to expand insight, celebrate, and support Black history and culture.

Signed and sealed by the Mayor and City Council of
the City of Daly City this 12th day of February 2024.

Juslyn C. Manalo, Mayor

Roderick Daus-Magbual, Vice Mayor

Pamela DiGiovanni, Councilmember

Glenn R. Sylvester, Councilmember

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The regular meeting was called to order by Mayor Manalo at 7:08 P.M.

ROLL CALL: Councilmembers Present:
Juslyn C. Manalo, Mayor
Roderick Daus-Magbual, Vice Mayor
Raymond A. Buenaventura
Pamela DiGiovanni

Councilmember Absent:
Glenn R. Sylvester

Staff Present:
Thomas J. Piccolotti, City Manager
Rose L. Zimmerman, City Attorney
K. Annette Hipona, City Clerk

PRESENTATIONS:

Commendation - Pacific Islands Together (PIT) Christmas Giveaway
(Reyna Meafua, PIT Founder)

Proclamation - National Gun Violence Survivors Week

APPROVAL OF MINUTES:

Regular Meeting of January 8, 2024

It was moved by Councilmember DiGiovanni, seconded by Vice Mayor Daus-Magbual and carried to approve the minutes of January 8, 2024.

APPROVAL OF AGENDA:

It was moved by Vice Mayor Daus-Magbual, seconded by Councilmember Buenaventura and carried to approve the agenda.

CONSENT AGENDA:

It was moved by Councilmember DiGiovanni, seconded by Councilmember Buenaventura and carried to approve the consent agenda with the exception of item #8.

Communications:

Accept the Fiscal Year 2023 Annual Comprehensive Financial Report

Note on Public Comments:

To provide public comments, members of the public have the option to- 1) attend in person, 2) email the City Clerk, or 3) submit comments through the public comment portal on the City's website. Persons with disabilities who require auxiliary aids or services in attending or participating in this meeting are instructed to call the office of the City Clerk at 991-8078 prior to the meeting.

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Resolutions:

Authorize the City Manager to Execute an Addendum Agreement with the South San Francisco Unified School District

Resolution 24-14, Authorizing Execution Of An Addendum Agreement With South San Francisco Unified School District For The Afterschool Youth Recreation Program At Junipero Serra Elementary School

Approve Recommended Position Changes in the Library Department and the Department of Recreation Services

Resolution 24-15, Approving Position Changes In The Library Department And The Department Of Recreation Services (Administrative Assistant II To Administrative Assistant III)

Approve Salary Reassignments for Specific Executive Management Positions

Resolution 24-16, Approving Salary Reassignment For The Fire Chief, Deputy Fire Chief And Chief Of Police Positions

Adopt Resolution Authorizing Execution of Amendment to the Employment Agreement of the City Manager

City Attorney Rose Zimmerman provided the staff report including the terms for the two-year extension of the City Manager’s contract, the base compensation, and proposed increases in salary. The Council provided deliberations on the item and staff was asked to address how the proposed salary increase compared to the rest of the County.

Brent Turner attested to City Manager Piccolotti’s reputation in the community as someone who helps people. Turner mentioned the competitive market for City Managers and believed that Piccolotti would be the best person in that capacity due to his knowledge of health, safety, infrastructure and his years of experience.

Sharon Keenan noted a big change in the City Council and the City Manager and noted the salary escalating far too fast and far too high. Keenan urged the Council to step back and think about the matter, and referred to the City Manager being paid more than the President of the United States.

Ray Keenan voiced concern with the lack of urgency in garbage not being picked up for three months after Keenan reported it to the City Manager and being told it would be taken care of the same day.

It was moved by Councilmember Buenaventura, seconded by Vice Mayor Daus-Magbual and carried by the following roll call vote to adopt the resolution:

Ayes:	Daus-Magbual, Buenaventura, Manalo
Noes:	DiGiovanni
Absent:	Sylvester

Resolution 24-17, Authorizing Execution Of Amendment To The Employment Agreement Of City The Manager Thomas J. Piccolotti

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Acceptance of Public Access Easement from Giuseppe Ruggiero, Trustee of the Ruggiero Family Revocable Trust, Subject to Exception No. 5, at 400 Castle Street

Resolution 24-18, Approving Acceptance Of The Public Access Easement At 400 Castle Street

Approve the Use of Federal Asset Forfeiture Funds to Purchase an Unmanned Ground Vehicle for the Police Department

Resolution 24-19, Authorizing Use Of Federal Asset Forfeiture (DEA) Funds To Purchase An Unmanned Ground Vehicle For The Police Department

Authorize the City Manager to Approve a Purchase Agreement for a 2024 TYMCO Model 600 Street Sweeper

Resolution 24-20, Approving A Purchase Agreement With TYMCO, Inc. For A 2024 TYMCO Model 600 Street Sweeper

Check Registers

Check Registers for the Month of December 2023

END OF CONSENT AGENDA

COMMUNICATIONS:

Resolution Admonishing Councilmember DiGiovanni

City Attorney Zimmerman provided the staff report, presenting a summary timeline for the investigation of Councilmember DiGiovanni's alleged acts of abuse, harassment and bullying. Zimmerman summarized the investigation report's findings including 21 corroborated accounts of abuse, harassment and bullying by DiGiovanni against the City Manager and City staff, and the course of recommended actions if the resolution was passed. The City Council directed the City Attorney to prepare a Resolution of Admonishment of Councilmember DiGiovanni in lieu of censure proceedings.

Councilmember Buenaventura and Vice Mayor Daus-Magbual, members of the Ethics Committee, reported on the committee's review of a memo from the City Manager that was sent to the Council regarding unprofessional conduct by Councilmember DiGiovanni towards staff, and the Ethics Committee's subsequent recommendation for an independent investigation. Mayor Manalo denounced the mistreatment of City employees and noted the importance of having a safe place in the workplace.

Ruth McHale, resident, spoke in support of Councilmember DiGiovanni, noting the lack of fairness as the City Council was three against one. McHale questioned the allegations of misusing City vehicles and noted that infractions may be exaggerated. McHale spoke about the remarkable work Councilmember DiGiovanni has done for the Police and Fire Departments, and the teachers of Daly City over the years.

Brent Turner supported the independent report's findings and made a suggestion for Councilmember DiGiovanni to have counseling, or to resign. Turner stated the allegations of antisemitism against the Council by Councilmember DiGiovanni were inappropriate. Turner managed to stop another

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activist from harassing staff and the Council during the Zoom meetings and encouraged that person to disassociate from DiGiovanni.

Fernando Montanes supported the independent report as a first step towards accountability for Councilmember DiGiovanni and expressed concern with the lack of remorse from DiGiovanni regarding the allegations against her. Montanes noted DiGiovanni had not taken the opportunity to address the misconducts and asked her to address the hypocrisy of using City vehicles for personal use with the taxpayers' money.

Councilmember DiGiovanni referred to the report and allegations against her, stating it was politically motivated. DiGiovanni stated she was not given enough time to prepare a rebuttal, noting the report was redacted and statements were not taken under oath. DiGiovanni stated the Ethics Committee has a conflict of interest being made up by members of the Council. DiGiovanni stated she did not receive due process during the investigation and requested giving Councilmember Sylvester, who was not present at the meeting, an opportunity for input.

Zimmerman addressed questions regarding who was present when the Closed Session meeting of January reconvened, whether there was a quorum at that meeting, and whether the investigation report will have an unredacted version.

Mayor Manalo stated there were no antisemitic sentiments from the Council.

It was moved by Councilmember Buenaventura, seconded by Vice Mayor Daus-Magbual and carried by the following roll call vote to adopt the resolution with the amendment to refer this matter to the San Mateo County District Attorney's Office and the California Fair Political Practices Commission.

Ayes:	Buenaventura, Daus-Magbual, Manalo
Noes:	DiGiovanni
Absent:	Sylvester

Resolution 24-21, Admonishing Councilmember Pamela DiGiovanni

Finding of Public Convenience and Necessity PCN-2-23-16098 to Sell Alcoholic Beverages for Off-Site Consumption at Seafood City at 1420 Southgate Avenue

Assistant Planner Brian Paland provided the staff report for applicant Seafood City's request for a PCN in order to obtain a liquor license for their grocery store at the subject site. Paland addressed questions on the square footage of the store, the percentage of alcohol being sold at the store, whether the previous grocery store at the site held a similar license, and the crime statistics on site.

It was moved by Mayor Manalo, seconded by Councilmember Buenaventura and carried by unanimous roll call vote to adopt the following resolution:

Resolution 24-22, Adopting Findings In Response To An Application For A Type 21 Liquor License – Seafood City – 1420 Southgate Avenue

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PUBLIC HEARINGS:

General Plan Amendment GPA-04-21-14998, Planned Development PD-04-21-14997, Major Subdivision SUB-04-21-14999, Design Review DR-04-21-15000, and Development Agreement – Serramonte Del Rey Campus Redevelopment

Mayor Manalo spoke with President Salahuddin of the Jefferson Union High School District (JUHSD) earlier with a request to move this item to a date uncertain. More time was necessary to give JUHSD opportunity to meet with individuals in the community and with labor unions, acknowledging Bryan Shields of Carpenters Local 217. Mayor Manalo supported JUHSD's request for continuance of this item.

Nancy Lacsamana, Community Garden Alliance, referred to a letter sent by Pacifica Social Justice, one of the groups supporting the community garden and opposing the current development, as it violated environmental concerns. Lacsamana noted the project not meeting timing requirements for inclusionary units, not distributing inclusionary units throughout the development, and being planned for predominantly market rate units.

Nick Occhipinti, former JUHSD Trustee, was opposed to the project noting that information is being withheld, that the Brown Act is being violated, and adopting an urgency ordinance would break Civil Rights laws. Occhipinti urged the Council not to serve corporate interests and to preserve the garden, which is supported by the native community and the almost 5,000 who signed a petition.

It was moved by Mayor Manalo, seconded by Vice Mayor Daus-Magbual and carried to continue this item by unanimous roll call vote.

Introduction of Ordinance Amending Title 6 of the Daly City Municipal Code re: Animal Control

Assistant to the City Manager Leilani Ramos provided the staff report including the updates to the Animal Control Ordinance provided by the San Mateo County Board of Supervisors. Staff addressed questions on whether there is an appeal process for an animal that is designated as vicious.

It was moved by Councilmember DiGiovanni, seconded by Vice Mayor Daus-Magbual and carried to open the public hearing. There were no speakers on this matter.

Mayor Manalo moved for the City Attorney to read the ordinance by title only.

Councilmember Buenaventura introduced the following ordinance:

Ordinance 1470, Amending Title 6 Of The Daly City Re: Animal Control

APPOINTMENTS:

It was moved by Vice Mayor Daus-Magbual, seconded by Mayor Manalo and carried by unanimous roll call vote to re-appoint Ray Satorre to the Planning Commission.

It was moved by Councilmember Buenaventura, seconded by Mayor Manalo and carried by unanimous roll call vote to appoint Fernando Montanes to the Recreation Commission.

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REPORTS:

City Council

Mayor Manalo invited everyone to the first Lunar New Year event at City Hall on Saturday, February 10th from 10AM-12PM and acknowledged Daly City's own Lion Dance Troupe who will perform at the event. Manalo reported on the delegation visit from Sister City Izumisano, Japan and thanked Marie and Serramonte for their collaboration in creating the well-known Senshu towel from Izumisano. Manalo welcomed everyone to the State of the City on Monday, March 18th at 6PM at Daly City Hall. Manalo thanked and acknowledged long-standing Personnel Commissioner Tita Perla Ibarrientos and PBRC staff Liza Rebotura, who were present at the meeting.

Staff

City Manager Piccolotti thanked the Council for their continued confidence in extending his employee contract and noted a section in the contract in which the City Manager has the option to defer the approved salary increases based on the City's financial forecast.

ADJOURNMENT:

Mayor Manalo adjourned the meeting at 9:40 PM.

Approved as submitted, this 12th

day of February, 2024.

Juslyn C. Manalo
Mayor

City Clerk



City Council Meeting Agenda Report

Item # _____

Meeting Date: February 12, 2024

Subject: Accepting and Appropriating a \$10,300 Grant from the Daly City Public Library Associates

Recommended Action

It is recommended the City Council accept a grant of \$10,300 from the Daly City Public Library Associates and appropriate this amount for new furniture for the Serramonte Main Library and VOX Books for children.

Background/Discussion

The Daly City Public Library Associates (DCPLA) has received a \$7,300 donation in honor of Gordon L. King to fund new public computer furniture at the Serramonte Main Library. This new furniture will add needed individual workspaces for visitors. It will match the existing furniture and is expected to last for many decades.

An additional \$3,000 from the Nora Roberts Foundation is also being given for the purchase of VOC Books. VOX Books combine picture books, chapter books, and non-fiction titles with audio recordings in an all-in-one read-along designed to capture a child's attention and make learning and literacy development fun.

Fiscal Impact

The \$10,300 grant revenue from the Daly City Public Library Associates was not anticipated in the current Fiscal Year budget. These grant funds were received and will be expended in Fiscal Year 2024-25.

Summary/Conclusion

Staff is available to provide any additional information desired by the Mayor or City Council.

Respectfully submitted,

Chela Anderson
Library Director



City Council Agenda Report

Item # _____

Meeting Date: February 12, 2024

Subject: Resolution Authorizing State of California Cannabis Equity Act Grant Funding

Recommendation

Approve the attached Resolution Authorizing State of California Cannabis Equity Act Grant Funding, authorizing the City Manager execute the grant agreement with the Governor's Office of Business and Economic Development.

Background

In 2016, California voters enacted Proposition 64, intended to create a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of non-medical cannabis, and to tax the cultivation and retail sale of cannabis for non-medical use.

In November 2018, Daly City voters approved a business license tax on all cannabis businesses of up to ten percent of gross receipts in anticipation of the future allowance of cannabis sales.

In October 2019, the City Council adopted an ordinance ("Cannabis Ordinance") which authorized commercial cannabis activities and established a process for permitting and regulating commercial cannabis activities in Daly City.

In August 2023, while approving the most recent cannabis Zone 7, City Council suggested the City adopt an equity program related to cannabis.

In December 2023, City staff applied for the State of California Cannabis Equity Grant funding Type 1 – *solely to be used for the purpose of conducting an equity assessment and/or developing a local equity program.*

By January 2024, City staff was notified of Daly City's Type 1 award of \$75,000.

Discussion

Daly City's equity goals as related to cannabis are a worthy endeavor to providing opportunities to those most impacted by the drug war in their lives. The City recognizes the need to assist those who are attempting to navigate the regulatory process while dealing with the consequences of their legal and socio-economic challenges. Developing a comprehensive upward mobilization plan for equity eligible people throughout Daly City is a priority for the City, including the provision of economic opportunity to persons that have been impacted by the war on drugs. With this grant, City staff aim to follow the California Cannabis Equity Act (2018): A local equity program means a program that focuses on inclusion and support of individuals and communities in California's cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization as evidenced by the City's equity assessment.

Resolution Authorizing State of California Cannabis Equity Act Grant Funding

Meeting Date: February 12, 2024

A thorough equity assessment will be conducted by third-party contractors and under grant guidelines, will be paid no more than \$40,000. The assessment would chauffeur a data-driven approach to developing and implementing social equity while identifying individuals and communities directly impacted by the War on Drugs. Equity participants should be defined as those directly impacted by the War on Drugs, either with prior federal, state, or local cannabis conviction(s) and/ or a parent/guardian or spouse/domestic partner of an individual with a prior cannabis-related conviction (these include arrest(s) for cannabis-related convictions where cannabis was used as pretext for a stop or investigation). Developing an effective and long-lasting equity framework requires all parties to have a mutual comprehension and explanation of health and social equity. This assessment with a shared understanding of health and social equity can focus on various priorities, such as access to cannabis wealth creation and workforce development, community investment, healing and wellness, and other aspects outlined by stakeholders in the assessment. This assesses current practices, identifying challenges facing Daly City in its implementation of an equitable cannabis permitting program, and potential solutions based on best practices.

A successful assessment would articulate which populations or communities have been affected by discriminatory practices and identify who would most benefit from an equity program i.e. the underserved and underinvested demographics. Preliminary recommendations driven by the equity assessment will help guide the City to support an equitable cannabis industry, including some that require significant time, investment, and risk mitigation. The assessment may also set up the criteria for participants in an expungement program. The community and public will have the opportunity to provide feedback and input on the assessment driven recommendations. The City will continue its community driven collaborative process to shape the City's Equity Program, informed by additional data analysis, stakeholder feedback, and evaluation of policy and legal implications.

Multi-Departmental Coordination. The Police Department will assist in providing necessary data on arrests made during the drug war. When such data is not available, San Mateo County Sheriff Department may have arrest records data needed to identify social justice inequities among individuals and communities.

Regarding staff time associated with the compilation and review of data, it is estimated the Police Department will require several hours depending on if the data is easily available electronically. Arrests made before 2009 may not be electronically available. Regulatory and legal review will take several hours depending on barriers identified and data collected. Additionally, the Economic Development Specialist will undertake this 12- month long-plus endeavor that will require several hours per month for planning, research, and obtaining community feedback through townhalls and focus groups, as well as development time to build the framework for the program.

SUGGESTED TIMELINE for the completion of the cannabis equity assessment:

Months 1-2: Planning and Research

Define the goals and objectives of the equity assessment or local equity program development.

Assemble a task force comprising community members, government representatives, legal experts, and other stakeholders.

Conduct an initial assessment of the current state of cannabis equity in the community, including demographic data, economic indicators, and existing cannabis businesses.

Resolution Authorizing State of California Cannabis Equity Act Grant Funding

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Months 3-4: Stakeholder Engagement

Organize public forums, town halls, and focus groups to gather input from community member and stakeholders.

Engage with cannabis businesses, advocacy groups, and industry experts to understand their perspectives and needs.

Months 5-6: Legal and Regulatory Review

Review existing cannabis regulations and ordinances.

Identify legal barriers to equity and propose regulatory changes.

Months 7-8: Drafting the Equity Assessment Report or Program Framework

Compile data from the assessment and stakeholder input to create a comprehensive report.

Draft the framework including eligibility criteria, licensing considerations, and support services.

Months 9-10: Public Review and Feedback

Release the draft equity assessment report and local equity program framework for public review.

Gather feedback from public and stakeholders through hearings, surveys, or other mechanisms.

Months 11-12: Revision and Approval

Revise the equity assessment report and program framework based on feedback.

Present the final assessment and program framework to government authorities for approval.

Ongoing: Implementation and Monitoring

Implement the approved equity program and recommendations outlined in the assessment.

Establish a monitoring and evaluation system to track the effectiveness and impact of the equity program. Adjust program and regulations based on ongoing assessments and feedback.

Fiscal Impact

The Cannabis Equity Act Grant Type 1 Funding is \$75,000. The grant term ends October 31, 2025, by which all grant funds must be expended. After both parties sign the agreement, the turn-around time for a check to be disbursed is approximately four (4) weeks.

Authorizing resolutions must be received by GO-Biz no later than March 25, 2024, and all grant agreements must be signed by April 1, 2024. Quarterly reports due to the State start in October 2024 giving City staff ample ramp-up time to start spending the funds.

The Cannabis Equity Act Grant Type 2 Funding is \$250,000 and must be applied for only after an equity program has been implemented and running.

Conclusion

Staff recommends that City Council approve the attached Resolution Authorizing State of California Cannabis Equity Act Grant and adopt a process for permitting and regulating commercial cannabis

Resolution Authorizing State of California Cannabis Equity Act Grant Funding

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business operations with an equity lens to create the infrastructure in communities that have historically lacked equitable and inclusive access to the cannabis industry.

Staff is available to provide any additional information desired by the Mayor and Councilmembers.

Respectfully submitted,



Maybelle Manio
Economic & Community Development
Specialist



Tatum Mothershead
Economic & Community Development
Director

Attachment

Resolution Authorizing State of California Cannabis Equity Act Grant Funding

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY
AUTHORIZING STATE OF CALIFORNIA CANNABIS EQUITY ACT GRANT FUNDING

WHEREAS, the members of the California Legislature have recognized the need for cannabis equity grant funding; and

WHEREAS, funding has been provided to the Governor's Office of Business and Economic Development to provide grant funds to local governments; and

WHEREAS, City of Daly City supports the development of a local equity program; and

WHEREAS, City of Daly City has determined that it will use grant funds from the Governor's Office of Business and Economic Development to conduct a cannabis equity assessment and/or assist the development of a local equity program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Daly City that the City Manager is authorized to execute by electronic signature on behalf of City of Daly City the grant agreement with the Governor's Office of Business and Economic Development, including any extensions or amendments thereof and any subsequent grant agreement with the Governor's Office of Business and Economic Development in relation thereto.

BE IT FURTHER RESOLVED that any liability arising out of the performance of this grant agreement, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The Governor's Office of Business and Economic Development and the State of California disclaim responsibility for any such liability.

I hereby certify the foregoing to be a true copy of a Resolution adopted by the City Council of Daly City, California, at a regular meeting thereof held on the _____ day of _____, 2024, by the following vote of the members thereof:

AYES, and in favor thereof, Councilmembers: _____

NOES, Councilmembers: _____

ABSENT, Councilmembers: _____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MAYOR OF THE CITY OF DALY CITY



City Council Agenda Report

Item # _____

Meeting Date: February 12, 2024

Subject: Accept and Appropriate Fiscal Year 2024 Mid-Year Operating Budget Adjustments

Recommended Action

It is recommended that the City Council accept and appropriate Fiscal Year 2024 mid-year operating budget adjustments.

Background

The Fiscal Year 2024 Operating budgets were adopted by the City Council on June 12, 2023. The FY 2024 mid-year budget review is an opportunity for staff to recommend budget adjustments to reflect changes in revenue and expenditure estimates based on performance through the first half of FY 2024.

Discussion

After a review of financial activity from July 1, 2023, through December 31, 2023, City staff identified some needs for budget adjustments as summarized in Attachment A. Staff is recommending an increase in General Fund budgeted expenditures by a total of \$159,838, which includes increases of \$40k for Measure Q Recreation services and supplies, and \$119,838 for other services and supplies, program costs, and capital outlay. Proposed adjustments to the General Fund budgeted revenues equate to an increase of \$1,594,284 in taxes and interfund transfers.

Staff recommends adjustments to expenditures in other Non-General Fund budgets that equate to approximately \$517k for other services and supplies. Proposed adjustments in revenues in Non-General Fund budgets equate to an increase of \$9,885 in the Housing Set Aside Fund and a decrease of \$4,965 for the Water Fund for interfund transfers.

Fiscal Impact

FY 2024 General Fund budgeted expenditures will increase \$159,838 and General Fund budgeted revenues will increase \$1,594,284. FY 2024 other City Funds will see an overall increase in budgeted expenditures of \$517k and an increase in budgeted revenues of \$4,920.

Summary/Conclusion

Staff recommends the City Council adopt a resolution to approve the recommended budget adjustments for FY 2024 as outlined in Attachment A. Staff is available to provide any additional information desired by the Mayor or City Council Members.

Respectfully submitted,

Timothy J. Nevin
Director of Finance and Administrative Services

Attachment A: FY 2024 Mid-Year Operating Budget Adjustments

Attachment A: FY 2024 Mid-Year Operating Budget Adjustments

FY 2024 Mid-Year Budget Adjustment Expenditure Break Down			
Fund	Org Key	Expense Type	Amount
01	General Fund	Services and Supplies	92,000
		Measure Q Services and Supplies	40,000
		Program Costs	25,743
		Other Charges	2,095
		General Fund Total	159,838
41	Water Fund	Other Charges	172,000
53	PBX Telephone System	Capital Outlay	20,000
55	Information Services Fund	Services and Supplies	325,000
Total Expenditures			676,838

FY 2024 Mid-Year Budget Adjustment Revenue Break Down			
Fund	Org Key	Revenue Type	Amount
01	General Fund	Taxes	1,334,343
		Interfund Transfer	259,941
		General Fund Total	1,594,284
11	Housing Set Aside Fund	Interfund Transfer	9,885
41	Water Fund	Interfund Transfer	(4,965)
Total Revenues			1,599,204



City Council Agenda Report

Item # _____

Meeting Date: February 12, 2024

Subject: Accept and Appropriate Fiscal Year 2024 Mid-Year Capital Improvement Program Budget Adjustments

Recommended Action

It is recommended that the City Council accept and appropriate Fiscal Year 2024 Capital Improvement Program (CIP) budget adjustments.

Background/Discussion

The Fiscal Year 2024 Capital Improvement Program (CIP) budget was adopted by the City Council on June 12, 2023. As part of the mid-year update, staff has identified several projects that should be added, modified, and/or removed. Using the criteria previously established to identify CIP projects, a number of projects have been identified and are submitted for approval. In the attachment provided, you will find the description and justification for each project that is being presented for approval and inclusion in the CIP.

The projects that are being recommended for approval are:

- Mission Street Transit Hub & Bus Shelter Painting and LED Lighting Upgrade: This project is near completion, and \$75,000 can be returned to the General Fund Balance.
- Fire Station 91 Roof Replacement: This project is near completion, and \$110,000 can be returned to the General Fund Balance.
- Mission Hills Dog Park Design: There is a big need for a fenced dog park in Daly City, and the Parks Master Plan identified an area at Mission Hills Park that would be suitable for a dog park. The request is to allocate \$85,000 from the General Fund to prepare a design for a dog park at Mission Hills Park.
- Traffic Signal/Streetlight Improvements: The decorative light poles on School Street from Highway 280 to Mission Street have deteriorated at the base and have been taken down for safety reasons. New streetlights are needed, and additional General Fund in the amount of \$200,000 needs to be appropriated to the Traffic Signal/Streetlight Improvements project account.
- Fire Station 93 HVAC System and Energy Upgrades: During review of the Fire Station 93 HVAC System project, staff determined that additional energy upgrades should be included in the project. The request is to rename the Fire Station 93 HVAC System project to Fire Station 93 HVAC System and Energy Upgrades project and also appropriate additional

General Fund in the amount of \$227,500 to the renamed Fire Station 93 HVAC System and Energy Upgrades project account.

- **Mussel Rock Alternative Study:** The next phase of study for Mussel Rock is to obtain geotechnical data and identify alternatives for a long-term solution. An amount of \$650,000 from the Solid Waste Franchise Fee CIP Set Aside needs to be appropriated to the Mussel Rock Miscellaneous Waste Mitigation/Stabilization project account.
- **C/CAG Smart Corridor:** City/County Association of Governments of San Mateo County (C/CAG) is requesting that Daly City manage the construction of the Northern Cities Smart Corridor – Daly City/Colma. At the January 8, 2024 City Council meeting, the City Council authorized the City Manager to execute the funding agreement with C/CAG for the construction phase of the Smart Corridor project, and cost incurred by the City will be reimbursed by C/CAG. The amount of \$5,800,000 will be budgeted from C/CAG Smart Corridor Program Reimbursement.

Future unanticipated CIP budget adjustments will be presented to Council on an as-needed basis.

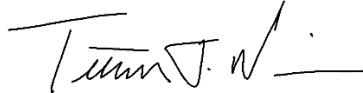
Fiscal Impact

Staff has carefully selected the appropriate funds for each project while trying to minimize negative impacts to the General Fund. If approved, the amounts needed would be a net total of \$327,500 in General Fund Funding, \$650,000 in Solid Waste Franchise Fee CIP Set Aside and \$5,800,000 in C/CAG Smart Corridor Program Reimbursement.

Summary/Conclusion

Staff recommends the City Council adopt a resolution to approve and appropriate the recommended budget adjustments for Fiscal Year 2024 Capital Improvement Program budget as outlined in Attachment A. Staff is available to provide any additional information desired by the Mayor or City Council Members.

Respectfully submitted,



Timothy J. Nevin
Director of Finance and Administrative Services



Richard Chiu, Jr.
Director of Public Works

Attachment A:
FY 2024 Mid Year Capital Improvement Program Budget Adjustments

FY 2024 Mid-Year Budget Adjustment-Return of Funds/Surplus				
Project Name	Description	Justification	Amount Requested	Funding Source
Mission Street Transit Hub & Bus Shelter Painting and LED Lighting Upgrade	Project is near completion. Remaining funds can be returned to General Fund balance	Excess in funds	\$ (75,000)	General Fund
Fire Station 91 Roof Replacement	Project is near completion. Remaining funds can be returned to General Fund balance	Excess in funds	\$ (110,000)	General Fund

FY 2024 Mid-Year Budget Adjustment Requested Appropriations				
Project Name	Description	Justification	Amount Requested	Funding Source
Mission Hills Dog Park Design	To prepare a design for a dog park at Mission Hills Park	The Parks Master Plan has identified a need for a fenced dog park at the Mission Hills Park	\$ 85,000	General Fund
Traffic Signal/Streetlight Improvements	To replace the decorative light poles on School Street from Highway 280 to Mission Street.	New streetlights are needed to replace the decorative light poles that were taken down due to safety reasons	\$ 200,000	General Fund
Fire Station 93 HVAC System and Energy Upgrades	Request to rename the Fire Station 93 HVAC System project to Fire Station 93 HVAC System and Energy Upgrades project and appropriate an additional \$227,500 to the renamed Fire Station 93 HVAC System and Energy Upgrades project account.	After reviewing the project, staff determined that additional energy upgrades need to be included	\$ 227,500	General Fund
Mussel Rock Alternative Study	Obtain geotechnical data and identify alternatives for a long term solution	An additional phase is needed for this project to identify long-term solutions	\$ 650,000	Solid Waste Franchise Fee
C/CAG Smart Corridor	City/County Association of Governments of San Mateo County (C/CAG) is requesting that Daly City manage the construction of the Northern Cities Smart Corridor – Daly City/Colma	City Council authorized the City Manager to execute the funding agreement at the January 8, 2024 City Council meeting.	\$ 5,800,000	C/CAG Smart Corridor Program Reimbursement



City Council Agenda Report

Item # _____

Meeting Date: February 12, 2024

Subject: Reallocation of PLHA funds to Midway Village

Recommended Actions

Approve reallocation of \$486,230 in Permanent Local Housing Allocation Funds from 493 Eastmoor to Midway Village Phase 2.

Background

In June of 2022 the City Council approved an allocation of \$2,917,380 in Permanent Local Housing Allocation (PLHA) funds for the Core Companies' affordable housing project at 493 Eastmoor. Since that time, the Core Companies has worked diligently to secure additional subsidy financing required to fully fund the development costs of their project. Unfortunately, the project still needs significant additional subsidy financing before it can proceed to construction. Currently, the developer is seeking funding from the National Housing Trust Fund, and anticipates a hearing a response to their proposal in May of 2024 making the earliest possible construction start date of May, 2025.

In Spring of 2023, MidPen Housing approached the City with a request for subsidy financing to assist in the redevelopment of Midway Village. This 4-phase project, approved per Council Resolution #20-98, will result in the transformation of a 150 -unit former public housing project to a 555 -unit affordable housing development that will provide studios, 1, 2, 3 and 4 bedroom homes to families, seniors, and special needs individuals and households including existing residents. The redeveloped Midway Village will include community rooms, childcare facilities, outdoor play spaces, onsite parking, open spaces and updated infrastructure. The modernized development will utilize the most current energy efficient building materials, mechanical systems and design elements.

Midway Village Phase 2 includes 113 affordable homes and will serve households with incomes ranging from 15% to 60 % of area median income (AMI). The community includes 28 units reserved for those eligible for the Housing for Healthy California (HHC) program, which targets homeless individuals in need of substantial health care support, which will be provided by San Mateo County Health. Forty-six (46) units will also be reserved for existing Midway Village residents who will move from units that are nearly 50 years old into the brand-new building. Phase 2 will be providing a brand-new, state-of-the-art child care center on its ground floor for Peninsula Family Service, the operator of the licensed child care currently onsite.

The PLHA program was created in response to SB 2, which was signed by Governor Brown in 2017 and will provide a permanent revenue source to Daly City for a wide variety of affordable housing activities. So far, the City's annual allocations have ranged from \$438,780 to \$875,455. Annual allocations must be committed and expended within 58 months of the allocation date, or the State can rescind the funding. The City's first year allocation was \$511,821 and after deductions for administrative costs, a total of \$486,230 is available for investment in affordable housing.

City Council Agenda Report

Subject: Reallocation of PLHA Funds to Midway Village Redevelopment

Meeting Date: February 12, 2024

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Discussion

Reallocation of the City's first year PLHA allocation will help complete the subsidy financing for Midway Village Phase 2, enhancing its competitiveness for an application this spring for tax credits and tax-exempt bonds, which, if awarded, would allow project to begin construction of the next 113 units in winter, 2025. The Year 1 PLHA funds transferred from 493 Eastmoor can be replaced with future year PLHA funds or Housing Trust funds, resulting in no net shortfall to the project.

If the transfer of \$486,230 in PLHA funds from 493 Eastmoor to Midway Village is approved, the funds would be offered to MidPen in the form of a loan with a one percent interest rate. MidPen would be required to sign and record an affordability covenant requiring that 54 units be reserved for households with incomes at or below 60 percent of the area median and at rents affordable to households at this income level. Table 1 shows the current income limits and rent levels for households at 60 percent AMI. These are adjusted annually. As a condition of the funding, the City would carry out annual compliance monitoring.

Table 1
Midway Village
Income Limits and Affordable Rents

<u>Household Size</u>	<u>60 % AMI Income Limit</u>
1	\$ 78,000
2	\$ 89,200
3	\$100,400
4	\$111,500
5	\$120,500

<u>Unit Type</u>	<u>2023 60 % AMI Rent</u>
Studio	\$1,951
1-Bedroom	\$2,091
2-Bedroom	\$2,509
3-Bedroom	\$2,898
4-Bedroom	\$3,234

Staff has prepared the following loan documents to memorialize the terms and conditions of providing PLHA funds to Mid Pen:

- Loan and Regulatory Agreement Between the City of Daly City and MP Midway Associates 2, L.P.
- Secured Promissory Note

City Council Agenda Report

Subject: Reallocation of PLHA Funds to Midway Village Redevelopment

Meeting Date: February 12, 2024

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- Deed of Trust
- Declaration of Affordability Covenant

The firm of Devine & Gong, an affordable housing financial consulting firm, was retained to prepare an underwriting analysis for the proposed funding. That analysis concluded that when all funding sources are confirmed, the Midway Village project appears to be financially viable and ready to provide quality affordable housing for the life of the affordability covenant.

Recommendation

Approve the reallocation of \$486,230 in PLHA funds from 493 Eastmoor to Midway Village redevelopment and authorize the City Manager or his designate to sign all documents related to a loan of \$486,230 in PLHA funds from the City to MidPen.

Respectfully submitted,



Lenelle Suliguin
Senior Management Analyst



Tatum Mothershead
ECD Director

Attachments:

- Loan and Regulatory Agreement Between the City of Daly City and MP Midway Associates 2, L.P.
- Secured Promissory Note
- Deed of Trust
- Declaration of Affordability Covenant

**LOAN AND REGULATORY AGREEMENT BETWEEN THE CITY
OF DALY CITY AND MP MIDWAY ASSOCIATES 2, L.P.**

THIS AGREEMENT, entered into this _____ day of _____ 2023, between the City of Daly City, a political subdivision of the State of California, hereinafter called "City," and MP Midway Associates 2, L.P., a California Limited Partnership, hereinafter called "Borrower";

WITNESSETH:

WHEREAS, on June 8, 2020 by Resolution No. 20-86 the Daly City City Council (i) authorized the City to receive PLHA funding from the state, (ii) represented and certified that the City shall be subject to the terms and conditions as specified in the Standard Agreement, the PLHA Program Guidelines, and any other applicable SB 2 guidelines published by HCD, and (iii) authorized the City Manager or designee to execute the PLHA Program Application, the PLHA Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the PLHA grant awarded to Applicant, as HCD may deem appropriate; and

WHEREAS, on June 8, 2020 by Resolution No. 20-98, the Daly City City Council approved the Master Plan for the redevelopment of Midway Village. The redevelopment consists of the construction of 555 deed restricted units, and all units would be affordable to household up to 80 percent AMI.

WHEREAS, on June 25, 2021, HCD entered into an agreement with City, awarding City PLHA funds in the amount of \$511,821 and later amended on July 5, 2022, to include an additional \$795,529, and later amended on May 10, 2023, 2023, to include an additional \$875,455 and a complete, fully executed copy of the agreement and amendment is attached hereto as Exhibit G and H and I and incorporated herein by reference; and

WHEREAS, a portion of the City's PLHA funds are intended to be used for a loan to **MP Midway Associates 2, L.P.** to pay for Midway Village Phase 2 (the "Project"), on the terms and conditions hereinafter set forth; and

WHEREAS, Midway Village Phase 2, located at 45 Midway Drive, Daly City, CA, (the "Property")

was allocated \$486,230 in PLHA funding by the Daly City Council on [REDACTED] in Resolution No. [REDACTED].

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A -Project Description
- Exhibit B - Disbursement and Rates
- Exhibit C- Project Sources and Uses Development Budget
- Exhibit D - PLHA Program Requirements
- Exhibit E - PLHA Standard Agreement
- Exhibit F – PLHA Affordability Covenant

2. Services to be Performed by Borrower

In consideration for the funding assistance set forth herein and in Exhibit B, Borrower shall perform the services (hereinafter referred to as the "services" or the "work") necessary to implement the Project as described in Exhibit A.

3. Disbursements

Subject to Borrower's satisfactory performance of the terms and conditions set forth herein, including but not limited to Exhibit A, City shall disburse to Borrower in accordance with the rates and in the manner specified in Exhibit B. City reserves the right to withhold disbursements if City determines that Borrower's performance of applicable terms and conditions is unacceptable or documentation evidencing performance is unacceptable; provided City shall provide Borrower with 45 days' notice and opportunity to cure. In no event shall County's total fiscal obligation under this Agreement exceed \$486,230.

4. Security and Subordination

The Note shall be secured by the Deed of Trust upon Borrower's acquisition of a ground lease interest in the Property from the County of San Mateo ("Acquisition Closing"). City shall subordinate its Deed of Trust to the deed of trust securing Borrower's senior construction/acquisition loan if the terms of subordination presented are reasonable and acceptable to City.

City shall subordinate its Deed of Trust in connection with the refinancing of the principal amount of the senior debt at permanent conversion as evidenced by documents described in Section 17 (Conversion Requirements) of Exhibit A of this Agreement, provided the City Manager or their designee has received and reviewed the senior permanent loan documents, and has determined in good faith that: (i) the maximum principal amount of all loans secured by the Project does not exceed 75 percent of the value of the Project assuming completion of the improvements, as demonstrated by Borrower's appraisal as prepared by a reputable, licensed appraiser with significant Bay Area experience; and (ii) the language of any subordination agreement does not unreasonably limit City's security interest in the Project or adversely impact City's rights pursuant to any Affordability Covenant applicable to any City loan for the Project. The City Manager or their designee shall have the authority to approve such appraisals and execute such subordination agreements.

Borrower hereby: (i) represents and warrants that they are not affiliated in any way with the lender making the senior loan, and (ii) covenants that they will not become so affiliated by acquiring an interest in such lender,

or an interest in its loan, or otherwise.

5. Conditions of Funding

In addition to the terms detailed in Section 3 (Disbursements) above, City reserves the right to withhold disbursements if City determines that Borrower has not completed the conditions of funding, enumerated in Exhibit E of this Agreement. City acknowledges that upon execution of this Agreement, all conditions applicable to "Agreement Execution" set forth in Exhibit E have been completed to the satisfaction of City.

6. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall commence from the date of execution until 55 years from the date of issuance of the Certificate of Occupancy for the development. By December 2, 2028, a certificate of occupancy will have been issued and all units placed into service, and shall include Borrower's permanent loan conversion, as described in Section 17 (Conversion Requirements) of Exhibit A of this Agreement, unless otherwise modified in Exhibit A.

City may terminate this Agreement for cause after giving Borrower written notice of any breach or default under this Agreement and after the expiration of 30 days from the date of such notice to cure said breach or default, if Borrower fails to cure said breach or default to the satisfaction of City, in City's sole discretion; provided however, if the breach or default is curable but not of the nature which can be readily cured within 30 days, and Borrower has commenced to cure such breach or default within the 30 day period and is diligently pursuing such cure to completion, Borrower shall have such additional period of time as is reasonably necessary to cure the breach or default. If a default or breach occurs and is continuing (i.e. Borrower fails to cure or commence to cure), City may pursue all rights and remedies available under this Agreement, and under the accompanying Promissory Note ("Note"), Deed of Trust and Declaration of Affordability Covenant ("Affordability Covenant"), and any other rights and remedies available under the applicable law.

Borrower's limited partner(s) shall have the same right as Borrower to cure or remedy any default hereunder within the cure period provided to Borrower, extended by an additional sixty (60) days; provided, however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Borrower in order to cure such default, then the cure period shall be extended for an additional one hundred and twenty (120) days to provide time for the removal of the general partner of Borrower, and such cure shall be accepted or rejected on the same basis as if tendered by Borrower.

City reserves the right to waive any and all breaches of this Agreement, and any such waiver will not be deemed a waiver of all previous or subsequent breaches. In the event City chooses to waive a particular breach of this Agreement, it may condition same on payment by Borrower of actual damages occasioned by such breach of Agreement and shall make every effort to resolve the same quickly and amicably.

7. Availability of Funds

Notwithstanding any other provision in this Agreement, City may terminate this Agreement, or a portion of the services referenced in the Exhibits based upon unavailability of City funds by providing written notice to Borrower as soon as is reasonably possible after City learns of said unavailability of such funding.

8. Relationship of Parties

Borrower agrees and understands that work/services performed pursuant to this Agreement are performed by Borrower as conditions of receiving loan funding, and not as an employee or joint venture of City and that neither Borrower nor its employees acquire any of the rights, privileges, powers, or advantages of City employees.

9. Hold Harmless

General Hold Harmless. Borrower shall indemnify and save harmless City and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Borrower under this Agreement, or loan disbursement made pursuant to this Agreement brought for, or on account of, any of the following:

- A) Injuries to or death of any person, including Borrower or its employees/officers/agents;
- B) Damage to any property of any kind whatsoever and to whomsoever belonging;
- C) Any sanctions, penalties, or claims of damages resulting from Borrower's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPM) and all Federal regulations promulgated thereunder, as amended: or
- D) Any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of City and/or its officers, agents, employees, or servants. However, Borrower's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which City has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Borrower to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

10. Assignability and Subcontracting

Except as permitted in the Deed(s) of Trust or elsewhere in this Agreement, Borrower shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Borrower under this Agreement without the prior written consent of City. Any such assignment or subcontract without City's prior written consent will give City the right to automatically and immediately terminate this Agreement. Notwithstanding the foregoing restrictions, Borrower may, with City's prior written consent, assign its rights and obligations under this Agreement to a limited partnership formed to develop and own the Project. In connection with such assignment, City and Borrower acknowledge and agree that this Agreement and any other loan documents may be amended and restated to reflect such assignment.

11. Insurance

Borrower shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by City's Risk Management, and Borrower shall use diligence to obtain such insurance and to obtain such approval. Borrower shall furnish City with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Borrower's coverage to include the contractual liability assumed by Borrower pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to City of any cancellation of the policy for reasons other than non-payment of premium, and ten (10) days' notice of cancellation of the policy for non-payment of premium.

- A) **Workers' Compensation and Employer's Liability Insurance.** Borrower shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Borrower certifies, as required by Section 1861 of the California Labor Code,
 - i. That it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and
 - ii. That it will comply with such provisions before commencing the performance of work under this Agreement.
- B) **Liability Insurance.** Borrower shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Borrower and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all **claims** for property damage which may arise from Borrower's operations funded under this Agreement, whether such operations be by Borrower, any subcontractor, anyone

directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- i. Comprehensive General Liability\$1,000,000 per occurrence
- ii. Motor Vehicle Liability Insurance \$1,000,000
- iii. Professional liability \$1,000,000

- C) **General Contractor's Insurance.** At or before the start of construction or renovation work, Borrower shall cause its general construction contractor to furnish City with certificates of insurance evidencing the required coverages listed below.

- i. Builder's Risk Full value of construction contract
- ii. Worker's Compensation Statutory limits
- iii. General liability \$1,000,000 per occurrence

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further disbursement of funding pursuant to this Agreement until the breach is cured.

12. Non-Discrimination and Other Requirements

- A) *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- B) *Equal employment opportunity.* Borrower shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Borrower's equal employment policies shall be made available to City upon request.
- C) *Section 504 of the Rehabilitation Act of 1973.* Borrower shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified *handicapped* individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to Borrowers who are providing services to members of the public under this Agreement.
- D) *Discrimination Against Individuals with Disabilities.* Borrower shall comply fully with the *nondiscrimination* requirements of 41 C.F.R. § 60-741.5(a), which is incorporated herein as if fully set forth.
- E) *History of Discrimination.* Borrower must check one of the two following options, and by executing this Agreement, Borrower certifies that the option selected is accurate:
- ☐ No finding of discrimination has been issued in the past 365 days against Borrower by the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, or any other investigative

entity.

- ☐ Finding(s) of discrimination have been issued against Borrower within the past 365 days by the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, or other investigative entity. If this box is checked, Borrower shall provide City with a written explanation of the outcome(s) or remedy for the discrimination.

- F) *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Borrower to penalties, to be determined by the City Manager, including but not limited to the following:
- i. termination of this Agreement;
 - ii. disqualification of Borrower from bidding on or being awarded a City contract for a period of up to 3 years;
 - iii. liquidated damages of \$2,500 per violation; and/or
 - iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the City Manager.

To effectuate the provisions of this Section, the City Manager shall have the authority to examine Borrower's employment records with respect to compliance with this Section and/or to set off all or any portion of the amount described in this Section against amounts due to Borrower under this Agreement or any other agreement between Borrower and City.

Borrower shall report to the City Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Borrower that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Borrower shall provide City with a copy of their response to the Complaint when filed.

13. Retention of Records, Right to Monitor and Audit

- A) Borrower shall maintain all required records for five (5) years after City makes final payment and all other pending matters are closed, and Borrower shall be subject to the examination and/or audit of City, a Federal grantor agency, and the State of California.
- B) Reporting and Record Keeping: Borrower shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by City
- C) Borrower agrees upon reasonable notice to provide to City, to any Federal or State department having monitoring or review authority, to City's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. Lobbying Prohibited

Federal funds will not be used by Borrower for publicity or propaganda purposes designed to support or defeat legislation pending before Federal, State or local government. Federal funds will not be used by Borrower to lobby or influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any

Federal contract.

15. **Influencing Prohibited**

- A) No Federal appropriated funds have been paid or will be paid, by or on behalf of Borrower to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Borrower will complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and
- C) The language of paragraphs 17A and 178 will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

16. **Merger Clause & Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

17. **Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. **Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both:

- A) Transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and
- B) Sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of City, to:	In the case of Borrower, to:
Thomas Piccolotti City Manager City of Daly City 333 90 th Street	Shwetha Subramanian Assistant Secretary MP Midway Associates 2, L.P. 303 Vintage Park Drive, Suite 250

Daly City, CA 94015 Telephone: (650) 991-8127 Email: tpiccolotti@dalycity.org	Foster City, CA 94404 Telephone: (650) 356-2900 Email: shwetha.subramanian@midpen-housing.org
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**THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES
THIS DOCUMENT MAY SIGNED IN COUNTERPARTS**

REST OF PAGE DELIBERATELY LEFT BLANK

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

CITY:

City of Daly City

By:

Thomas Piccolotti, City Manager, City of Daly City

Date:

BORROWER:

MP Midway Associates 2, L.P.,
a California limited partnership

By: MP Midway 2, LLC,
a California limited liability company, its general partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation, its sole member/manager

By:

Shwetha Subramanian, Assistant Secretary

Exhibit A
Project Description and Requirements

In consideration of the payments set forth in Exhibit B and also described below, Borrower shall undertake the following activities and comply with the following restrictions and requirements:

1. **Project Description**

Name of Project: Midway Village Phase 2

Project Location / Address: 45 Midway Drive, Daly City, CA 94014

Assessor's Parcel Number(s):

- 005-330-020 (Ptn)
- 005-330-021 (All)
- 005-330-022 (Ptn)
- 005-330-028 (Ptn)
- 005-330-029 (All)
- 005-330-030 (Ptn)
- 005-330-031 (Ptn)
- 005-330-034 (Ptn)
- 005-330-043 (Ptn)

Total# of Units Proposed: 113 units including two (2) managers units

Total# of Affordable Units Proposed: 113 units at or below 60 percent area median income

Total# of PLHA Restricted Units: 54

Summary Project Description: Midway Village Phase 2 will support the long-term, physical, and financial sustainability of 111 family rental housing units and two manager units in Daly City. Of the 113 total units, at least 54 units will be affordable to households with incomes at/below 60 percent AMI.

Sources of Committed Funds:

Funding provided in this Agreement is from the following sources:

PLHA FY21	TOTAL
\$486,230	\$486,230

Project Sources & Uses Development Budget:

The budget detailed in Exhibit F of this Agreement represents current financing projections for the Project and are subject to change as the Project design and/or program is further refined.

Affordability and Physical Distribution of the Rental Units: Upon Acquisition Closing, City and Borrower shall enter into an Affordability Covenant governing the PLHA affordability restrictions for the Project. (see Exhibit X)

PLHA restricted rental units must be restricted and affordable to households at or below 60 percent of Area Median Income ("AMI") for San Mateo County as published annually by the United States Department of Housing and Urban Development ("HUD") and the California Tax Credit Allocation Committee ("CTCAC"). City must approve the affordability mix of the Project. The PLHA restricted units should be distributed by unit size, amenity mix, and income affordability throughout the entire Project, to the greatest extent possible.

- (a) PLHA-restricted units in the Project will be floating units: Upon recertification of household income, if a household no longer qualifies to occupy their PLHA restricted unit at the initially targeted affordability level for that unit, then the next available comparable unit shall become designated to target households at the same initially targeted affordability level as the recertified household's unit. The objective is to ensure the Project maintains the initial affordability-mix of the PLHA restricted units over time.
- (b) Rent Limit Compliance: City will periodically monitor the Project to ensure that the PLHA restricted units are in compliance with these affordability requirements, and that procedures used to calculate the maximum tenant-paid rent for PLHA restricted units are consistent with the Project's policies and requirements.
- (c) Any redesignation of income levels must comply with CTCAC Regulation regarding income averaging. In the event of a conflict between Section C in the PLHA Covenant and CTCAC Regulations regarding income averaging, the CTCAC Regulation will prevail.

Unit Affordability Provisions

Midway Village Phase 2

Targeting of Units*:

	Studio	1 BR	2 BR	3 BR	4 BR	Total
< 30% AMI	20	8	3	10	1	42
<60% AMI	4	17	25	20	3	69
<80% AMI						
Manager's Unit			2			2
Total	24	25	30	30	4	113

PLHA-Assisted Units	11	12	14	14	2	54
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Total Number of PLHA Units

54

2. **Subordination of Enforcement of Affordability Covenant.** All deeds of trust or mortgages on the Property, or any portion thereof, shall be subject and subordinate to the Affordability Covenant, except as provided in this section. City shall agree to subordinate its Affordability Covenant to any senior mortgage or Deed of Trust on terms that are reasonable and acceptable to City. The terms of the Affordability Covenant shall terminate in the event of a foreclosure or transfer in lieu of foreclosure if 1) City does not have any contractual or other legal rights to take actions that would avoid the termination of the Affordability Covenant; or 2) City has contractual or other legal rights to take actions that would avoid the termination of the Affordability Covenant, and City does not exercise these rights. However, the terms of the Affordability Covenant shall be reinstated if, during the original term hereof, the owner of record, before the foreclosure or transfer in lieu of foreclosure occurs, obtains an ownership interest in the Property. Borrower grants to City the right to take any and all legal action necessary to enforce the provisions of the Affordability Covenant, and Borrower will be responsible for all reasonable legal fees and costs incurred by City in the enforcement of the Affordability Covenant.
3. **Environmental Review.** All applicable California Environmental Quality Act ("CEQA") requirements, and National-Environmental-Policy Act (NEPA) requirements, to the extent applicable, must be met for all projects that receive PLHA funding.
4. **Compliance with California's Prevailing Wage Law.** Borrower's Project may be subject to California's prevailing wage law (Lab. Code, § 1720, et seq.). Borrower is urged to seek professional legal advice about the law's requirements. As a material condition of this Agreement, the City shall require Borrower to submit, on behalf of its general contractor retained for the Project, a certification of compliance with California's prevailing wage law. The certification must verify that prevailing wages have been or will be paid if such payment is required by law, and that labor records will be maintained and made available to any enforcement agency upon request. The

certification must be signed by Borrower and its general contractor.

5. **Performance Period.** Borrower shall complete predevelopment tasks, obtain construction/permanent financing, execute a construction closing, obtain a Certificate of Occupancy, and reach permanent conversion for the Project during the "Performance Period", which shall be the exact Term as set forth in Section 6 (Term and Termination) of this Agreement, and which may be extended by the parties pursuant to this Section. Failure to reach permanent loan conversion during the Performance Period will constitute a breach of the terms of this Agreement, provided, however, the Performance Period shall be extended if, in the reasonable discretion of City, Borrower is making acceptable progress toward permanent loan conversion. During the Performance Period, Borrower shall submit required quarterly progress reports described below and records of costs incurred for City reviews as necessary.
6. **Protect Completion.** Project Completion is defined as completion of construction of the Project as evidenced by issuance of Certificate of Occupancy or some other document acceptable to City ("Project Completion Document").
8. **Compliance Period.** The Compliance Period is defined as the time frame beginning immediately upon Project Completion and ending on the later of 55 years from date of issuance of a certificate of occupancy. Borrower shall provide City with a housing completion report, including final Project funding sources and uses, and tenant profile described below on forms acceptable to City within the first 180 days of the Compliance Period. Upon Borrower request to City, the due dates for these reports may be extended to accommodate a longer lease-up period if Borrower has demonstrated reasonable diligence and progress toward achieving 100 percent occupancy.

Thereafter, on an annual basis during the Compliance Period, or more often if required by City, Borrower will provide City with all information necessary to monitor the Project relating to program compliance matters. Annual information required will include but is not necessarily limited to: evidence of continuing fire and liability insurance; tenant incomes and rents; and any other compliance information as may be required by City.
9. **Property Standards.** Construction of the Project must fully comply with all applicable local and State building codes and regulations, and Borrower must operate and maintain the Project in a manner that ensures the Project will continue to comply with said codes and regulations. Borrower's operations and maintenance of the Project must ensure that its appearance from all public rights-of-way continually presents the Project in a high-quality manner.
10. **Agreement Term Extension.** The parties to this Agreement hereby acknowledge and affirm that notwithstanding Section 6 (Term and Termination) of this Agreement, completion of permanent loan conversion, as described in Section 17 (Conversion Requirements) of this Exhibit A, shall automatically and without further action on the part of the parties, extend the term of this Agreement to coincide with the expiration of the Affordability Covenant period or of the Compliance Period, whichever such event occurs later.
11. **Performance Schedule.** Prior to the first draw request, request for reimbursement and at each subsequent funding draw request, Borrower shall provide City with a performance schedule, including milestones for use of such funds and tasks to be performed.

12. **Quarterly Performance Reporting.** At execution of this Agreement and until permanent loan conversion (the "QPR Period"), Borrower shall submit to City a Quarterly Performance Report within 30 days after the end of each quarter. The report shall describe the Project-related tasks performed in the past three months and the expected Project-related tasks to be performed in the upcoming three months. The report must include an updated Project schedule and should indicate the status of the project in relationship to this timeline. Borrower must document any changes from the timeline submitted with the most recent funding application. Quarterly Performance Reports must be provided to County throughout the QPR Period, including reports that may be due subsequent to the final draw of funds provided under this Agreement. This report requirement is in addition to any information submitted with requests for reimbursement. From time to time, City may request from Borrower an updated "Project Proforma" including a development budget with sources and uses, debt sizing calculations, Low Income Housing Tax Credits ("LIHTC") calculations and pricing, 30-year operating proforma, base year rent and income projection, and maintenance and operating expenses. Borrower will have 30 days to satisfy such request. Quarterly Performance Reporting and updated Project Proformas should be completed by Borrower in CDS, or a different method as directed by City staff.

13. **Lease-up Requirements**

- A) Should a unified listings and application portal or single wait list or point of entry be created by County or regional agency for affordable housing units and/or other subsidized housing units in the County, all Units, except Homeless Units and Units targeted to County Clients, will utilize and participate in that portal, list or entry point to list Project and gather tenant applications for Project.

14. Conversion Requirements.

Prior to permanent loan conversion, Borrower shall provide City with the following documentation:

- current rent schedule that identifies the maximum restricted rents allowable, income, and actual rents for each unit;
- current utility allowance schedule;
- current rent roll;
- form of lease;
- description of the service amenities provided at the Project, together with (i) a budget for service expenses, and (ii) a copy of the fully executed and dated service contract and any amendments thereto;
- current year budget of the Project prepared by the property management company including income and operating expenses to-date and projected;
- final Certificate of Occupancy or equivalent document following completion of rehabilitation that allows occupancy of 100% of the units in the Property;
- draft Cost Certification or other completed cost audit required under TCAC regulations, including the final sources and uses budget for the Project, and documentation of any cost savings and repayments to subsidy lenders, including City, as detailed in Section 25 (Excess Proceeds/Cost Savings) of this Exhibit A;
- copy of executed Regulatory Agreement with TCAC, if applicable;
- Certified As-Built Survey (ALTA) showing the location of all improvements, easements, and utilities, with a legal description confirming the title policy; and
- a copy of the fully executed and dated Amended and Restated Limited Partnership

Agreement of Borrower (the "LPA").

Upon satisfactory review of this documentation, City shall approve permanent loan conversion and an extension of the term of this Agreement, as described in Section 12 (Agreement Term Extension) of this Exhibit A.

15. **Payment and Performance Bonds.** Not later than five business days prior to the date of construction loan closing, City shall have received one of the following: (i) payment and performance bonds issued by companies acceptable to City in the amount of 100 percent of the builder's contract amount for the construction of the Project naming City as an additional obligee; or (ii) a letter of credit issued by a bank acceptable to City in an amount equal to 10 percent of the builder's contract amount for the construction of the Project which shall not expire prior to the substantial completion of the Project.
16. **Monitoring.** During the Performance and Compliance Periods described in this Exhibit, City will undertake monitoring of Borrower's records and premises for program compliance. City will conduct monitoring visits at least every three years, or more frequently during the Compliance Period. Monitoring visits will consist of the following:
- A) On-site inspections of selected PLHA-restricted units, common areas and resident files. All units and files need to be accessible during the monitoring visit for random sampling.
 - B) Verification of Borrower-completed Tenant Profile form, containing demographic information such as race/ethnicity, and income verification. If resident refuses to provide race/ethnicity, Borrower may make a note in the application that the resident declined to answer. Income verifications should be completed on an annual basis.

Borrower shall be given adequate notice of monitoring visits.

In accordance with Section 15 (Retention of Records, Right to Monitor and Audit) of this Agreement, as applicable, Borrower shall keep and maintain income records of all tenants who rent any AHF-restricted units for the entire period of affordability term.

Notwithstanding the aforementioned, Borrower shall maintain all required records for a period of *five* (5) years after the end of the Compliance Period.

17. **Rents and Occupancy.** Project financing is anticipated to include proceeds from LIHTC. For LIHTC projects, City shall defer to income certification requirements imposed by tax credits. If project financing does not include tax credits, Borrower shall rely on income determination calculations set forth in 24 CFR Part 5 (i.e., the Section 8 Voucher Program). City low-income rent-limits may be obtained from the City.
18. **Security/Term/Loan Terms.** Unless otherwise noted herein, funding is provided in the form of a loan or loans, in accordance with terms described in this Paragraph. Should funding provided in this Agreement include more than one City funding source, separate Note(s) and Deeds of Trust will be executed for each funding source. For each funding source, prior to any disbursement of funds, Borrower shall execute and deliver a Note in the amount indicated below and, upon Acquisition Closing, a Deed of Trust in favor of City to secure the performance of all terms and conditions of the Note and this Agreement.

<u>Funding Source</u>	<u>Note Amount</u>	<u>Deed of Trust Amount</u>
PLHA	\$486,230	\$486,230

The Note will be non-recourse. Upon Acquisition Closing, the Deed of Trust will be recorded in the Office of the Recorder of the County of San Mateo upon loan execution. The Deed of Trust may be subordinate to the liens of any senior lenders.

For each Note, no interest will accrue on the Note until Project Completion. Simple interest at the rate of one percent (1%) will be charged annually, commencing on the first day of the first month following Project Completion. Upon permanent loan conversion, payment in full on the Note, including any accrued interest, will be due and payable no later than Fifty-Five (55) years after receipt of Project Completion Document ("Note Maturity"). The Note will be executed prior to any disbursement of funds under this Agreement. Should there be a conflict in the language between the Note and this Agreement, the Note will prevail.

19. **Repayment.** The provisions and requirements in this and foregoing sections will refer to each Note unless stated otherwise. Annual payments on the Note will be made from Project Operations, which begins on the first day of the month after the Project receives a Certificate of Occupancy, or some other document evidencing completion acceptable to City. Annual payments will equal a pro rata share of 50 percent of Residual Receipts, with payment amount determined by disbursed amount of City funding provided in this Agreement as a proportion of all local funding requiring repayment (to be confirmed by City and Borrower in writing outside of this Agreement).

Payment will be first applied to outstanding interest and then to principal until the Note is paid in full. In the event this payment is less than accumulated Interest owed plus current interest, any unpaid interest will carry over to the following year. Interest will not compound on this interest carry-over. The entire outstanding principal balance plus any unpaid accrued interest will be due and payable upon Note Maturity.

The first payment will be due no later than 120 days after the end of the Project's first fiscal year. A copy of the annual independent financial audit delineating Residual Receipts payment to City will also be delivered to City no later than 120 days after the end of each of the Project's fiscal years.

"Residual Receipts" means, with respect to the Project's fiscal year, the amount by which Gross Revenue exceeds Annual Operating Expenses, as defined below.

"Gross Revenue" means all rental and incidental income from the Project, except for tenant security deposits, loan proceeds and capital contributions and any interest earned on said deposits.

"Annual Operating Expenses" shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("**Approved Senior Loans**"); property management fees in an annual amount not to exceed Sixty Dollars (\$60) per unit per month and a bookkeeping fee of Nine and 50/100 Dollars (\$9.50) per unit per month, each increasing by 3% annually and paid pursuant to a property management agreement approved by City; premiums for property damage and liability

insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount no more than \$400 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or as required by a physical needs assessment prepared by a third-party and prepared at Borrower's expense; current and accrued partnership management fees payable to the general partner of Borrower and current and accrued asset management fees payable to the investor limited partner of Borrower and jointly payable in the maximum aggregate sum of \$35,000 per year, increasing annually by three percent (3%) per year; payments of deferred developer fee; cash deposits into operating reserves in an amount reasonably approved by City or required by the holder of an Approved Senior Loan, but only if the accumulated operating reserve does not exceed three (3) months' projected Project operating expenses; and other ordinary and reasonable operating expenses approved by City.

Prior to start of Project Operations, Borrower will confirm in writing with City all fee and reserve amounts to be included in the above calculations for Residual Receipts. Annual operating expenses will not include the following: depreciation, amortization, depletion, or other non-cash expenses, or any amount expended from a reserve account.

20. **Developer Fee.** Unless otherwise agreed to in writing by the City, the maximum cumulative cash developer fee (net of any general partner capital contributions) that may be paid from development sources shall not exceed the maximum amount allowed under TCAC regulations, which as of date of this Agreement is \$2,720,000. (the "Net Developer Fee"). To the extent there are not sufficient development sources to pay the Net Developer Fee, any unpaid amount may be paid as an "Annual Operating Expense" under Section 23. Any deferred developer fee remaining after payment of the Net Developer Fee may be paid only from Borrower's share of Residual Receipts.
21. **Excess Proceeds/Cost Savings.** "Surplus Cash" is defined as the difference between total of all sources of funds received for the Project and the total cost of the Project. If Surplus Cash remains after construction is completed and Borrower Form 8609 is filed, and all obligations to construction contractors, subcontractors, and lenders for construction period expenses are satisfied, Borrower shall reimburse City for its financial investment in the Project. Borrower shall prepare and submit to City a Cost Certification detailing the amount of Surplus Cash, if any, at permanent loan conversion as described Section 17 (Conversion Requirements) of this Exhibit A, which may be amended within 90 days of said conversion. City may, at its sole option, accept a Cost Audit required by another funding source as evidence of Surplus Cash, if any.

Borrower shall distribute Surplus Cash to City and other governmental agency/agencies requiring reimbursement/repayment in direct proportion to the share of total Project funds disbursed from each such agency funding the Project. These other agencies, and respective amounts disbursed will be confirmed in writing outside of this Agreement prior to start of construction or rehab. Any reimbursement to City will be counted toward repayment of the amount owed on City Note[s], with such payment first applied toward any interest accrued before reduction of the principal balance.

Borrower may opt to retain up to 50 percent of the Surplus Cash proceeds with the other 50 percent to be distributed to City and other applicable public/governmental agencies in the proportion described above. Should Borrower opt to retain a portion of the Surplus Cash, its portion shall be used solely for ongoing Project Operations or for payment of deferred Developer Fees. In either case, Borrower shall inform City of its intent to retain up to 50 percent of the Surplus Cash and provide a detailed description of the intended use(s) of the Surplus Cash, as well as the identity of any other public/governmental funding agencies, in writing, no later than the permanent loan closing date.

22. **Prepayment.** Prepayments may be made at any time without penalty.
23. **Due on Sale, Refinance, or Transfer of Title.** In the event of a sale, refinance or transfer of the Project or any interest therein by Borrower without prior written consent of the City Manager, the entire principal balance of the Note, including any accumulated interest, shall be immediately due and payable. However, (i) the transfer of limited partner interests in Borrower to a LIHTC investor, (ii) the subsequent transfer of such limited partner interests for the purpose of syndicating the UHTC, or (iii) the granting of an option or right of first refusal by the Borrower to Mid Pen Housing (or an affiliate thereof) and any transfer pursuant to such option or right of first refusal shall not be considered a sale, refinance or transfer of the Project for purposes of this section. Replacement of the general partner of Borrower with any other entity shall be subject to prior written approval of City, which shall not be unreasonably withheld.
24. **Acceleration of Note.** In the event Borrower breaches any of the terms and conditions of this Agreement after thirty (30) days written notice and failure to correct the breach, Borrower will be in default of the terms and conditions of this Agreement as well as the Note, and County may demand immediate and full payment of the principal amount of this Note and any accrued interest, and/or may initiate foreclosure proceedings under the Deed of Trust. However, if such cure cannot reasonably be completed within such thirty (30) day period, Borrower may request additional time in order to effectuate a cure, and City may approve such additional time at its discretion, provided that Borrower is diligently pursuing such cure to completion.

Default may result from:

- A) Failure of Borrower to make any payment hereunder as when and due;
 - B) Failure of Borrower to perform or observe any terms or provisions of this Agreement, including but not limited to meeting affordability requirements;
 - C) Use of funds under this Agreement for purposes not approved by City; or
 - D) Occurrence of any other event (whether termed default, event of default, or otherwise) which under the terms of this Agreement will entitle City to exercise rights or remedies hereunder.
25. **Title Policy.** If funds provided in this Agreement are to assist in property acquisition, Borrower shall open an escrow account with a mutually acceptable title company. City as a lender shall provide instructions to record its Deed of Trust and Affordability Covenant.

For all loans secured by a Deed of Trust, at the close of escrow, Borrower shall obtain for City's benefit, an ALTA extended coverage lender's policy of title insurance in an amount not less than the face value of the Note, clear of any title defects which would prevent the operation of the proposed Project. Borrower shall be responsible for paying all recording fees, escrow fees, the premium for the title insurance policy, all fees and cost for any new financing, and shall pay any applicable transfer taxes.

26. **Fire and Extended Coverage.** Upon Acquisition Closing, Borrower at its costs shall maintain for the Project a policy of standard fire and extended coverage during the life of the Note and Deed of Trust securing this Agreement, or any subsequently executed document which replaces the Note and Deed of Trust, with vandalism and malicious mischief endorsements, in the amount of at least the full replacement value of the improvements which are part of the Project. The insurance policy must be issued in the names of Borrower and City as their interests appear. The Insurance policy must contain a lender's loss payment endorsement, providing that any proceeds will be payable to City as its interests appear and may be subject to the interest of senior lenders.

Subject to the requirements of senior lenders, in the event that Borrower shall undertake to restore the damaged improvements or to reconstruct the destroyed improvements within a period of sixty (60) days of receipt of insurance proceeds, such insurance proceeds received by City will be released to Borrower as payments are required for said purposes, and upon completion of such restoration or reconstruction, any balance thereof remaining will be paid to Borrower forthwith, subject to the rights of senior lenders.

In the event that Borrower fails to undertake the restoration or reconstruction of such improvements within sixty (60) days after receipt of insurance proceeds following any such damage or destruction, there will be paid and released to City from such insurance proceeds a sum equal to the cost of clearing the premises in the event Borrower does not at its own expense clear the premises within said period. Subject to the rights of senior lender, the balance will be held to compensate the parties to this Agreement as if the premises were sold. Subject to the requirements of senior lenders,

Borrower shall also sell the vacant land on the open market and the proceeds of the said land sale will be paid to City to repay the loan subject to the rights of senior lenders.

27. **Mandatory Acknowledgement of City as Funder.** All activities receiving any type of funding assistance and/or substantial technical assistance through City for capital improvements must indicate such in any advertising, marketing, public presentations, press releases, written materials, or project descriptions.

All capital projects must display signage as described below:

- A) Temporary Construction Signage identifying Permanent Local Housing Allocation funding from the City of Daly City must be appropriately displayed during the major portion of the construction phase. Such signage must be provided by Borrower and must be pre-approved by City in design and content.
- B) Permanent Signage must be attached to all completed projects and must be displayed in a visible, heavily trafficked area of the Project (e.g., front lobby, main entry or walkway, etc.). Location of display must be approved by City.

Exhibit B - Disbursement and Rates

Funding provided In this Agreement is to be used to support work scope activity and delivery costs enumerated In Exhibit A. None of the funding shall be used to support Borrower's general administration costs. Subject to the terms of the Agreement, City shall disburse loan funds to Borrower based on the following fee schedule and terms:

Funding for this project covers eligible expenses incurred no more than one year prior to execution of this agreement and no later than September 30, 2024.

Funding assistance by City will be provided upon submission of reimbursement requests by Borrower to City, except in cases in which funding provided in this Agreement will be used for property acquisition or other exemption approved by City. Requests for reimbursement shall include copies of invoices paid, together with warrants, canceled checks, or other proof that the invoices have been paid. Should draw requests be made prior to invoice payment, due to exemptions stated above, Borrower shall include proof of paid invoices from the previous draw request prior to submission of subsequent requests.

Borrower shall submit requests for reimbursement and all related back-up documentation to the Housing Division in the City's Department of Economic and Community Development. At a maximum, Borrower may submit to City one request for reimbursement per 30-day period.

Borrower shall certify in writing that the specific services for which funding assistance is being requested have been satisfactorily completed, that the amounts requested are accurate, and that all such amounts are being or have been expended on behalf of and exclusively for the Project. Borrower agrees to pay subcontractors directly, unless exempted by City, and City agrees to reimburse Borrower through funds provided in this Agreement. City reserves the right to verify the accuracy and completeness of such certification prior to payment to Borrower.

Reimbursement requests must be submitted by September 30, 2024.

Alternative Payment/Reimbursement Process:

Depending on the arrangement between the Parties, and upon receipt, review and approval of invoice, City will reimburse Borrower for actual costs incurred for services rendered/incurred, provided Borrower provides City with documentation and assurances described below that the costs were appropriate to the request for reimbursement and consistent with the budget described in Exhibit A.

Borrower is required to provide hard copies of invoice documentation or a summary of documentation plus scanned/emailed support materials as a condition of City review and approval. In all cases, Borrower shall make documentation records available for City review upon request.

In no event shall City reimburse Borrower for any payments exceeding the total amount stated in Section 3 (Disbursements) of this Agreement. Borrower authorization for requests for reimbursement through CDS must be from an authorized representative of Borrower. By requesting authorization for payment reimbursement, Borrower certifies that the specific services for which reimbursement or payment is being requested have been satisfactorily completed, that the payments are proper and that all funds to be expended are on behalf of and exclusively for the activity or services described in Exhibit A. City reserves the right to verify such completion prior to or after reimbursement/payment to Borrower.

Questionable Disbursement Request: In the event of a questionable disbursement request, City will state in writing the specific nature of its objections to Borrower's reimbursement request. If applicable, City will also specify what actions or changes are necessary to make the work for which reimbursement is sought acceptable. Borrower shall respond to City within 15 days of receipt of such objections. The parties to this Agreement shall meet to discuss such objections at the request of either party. City will not be obligated to

disburse funding in reimbursement for any billing until any and all objections to the adequacy of the services rendered or the amount of the billing have been resolved.

Exhibit C**Project Sources and Uses Development Budget****SOURCES****DEVELOPER:****MidPen Housing Corporation****PROJECT:****Midway Village Phase 2**

	CONSTRUCTION	PERMANENT
Construction Loan	\$55,590,420	
Amortizing Perm Loan, Tranche A		\$5,250,258
Amortizing Perm Loan, Tranche B		\$15,199,841
Tax Credit Investor Proceeds	\$6,275,076	\$62,750,762
GP Equity		\$7,502,056
Deferred Developer Fee	\$7,502,056	\$2,439,694
County of San Mateo AHF 9	\$6,762,723	\$6,762,723
County of San Mateo AHF 11	\$8,000,000	\$8,000,000
PFS CDC Contribution	\$1,000,000	\$1,000,000
HCD Infill Infrastructure Grant	\$9,114,536	\$9,114,536
FHLB AHP	\$1,000,000	\$1,000,000
Accrued Interest	\$530,175	\$530,175
Daly City PHLA (HCD)	\$486,230	\$486,230
PFS Cal Fire Grant	\$1,000,000	\$1,000,000
HACSM Reserves	\$10,000,000	\$10,000,000
TOTAL	\$107,261,216	\$131,036,275

FINANCING ASSUMPTIONS**4%**

Debt Coverage Ratio	1.15
Construction Rate	7.60%
Permanent Rate	6.55%
Perm Loan Amortization	40 yrs

Exhibit C

Project Sources and Uses Development Budget

DEVELOPMENT COSTS

DEVELOPER: MidPen Housing Corporation

PROJECT: Midway Village Phase 2

Number of Dwelling 113

Gross Building Area 130,175

Net Rentable Area (90,834

	<u>TOTAL COST</u>	<u>\$ PER UNIT</u>	<u>\$ PER SF</u>	<u>% OF TOTAL</u>
LAND COSTS				
Acquisition including Closing Costs	\$30,000	\$265	\$0.23	0%
TOTAL LAND COSTS	<u>\$30,000</u>	<u>\$265</u>	<u>\$0.23</u>	<u>0%</u>
DIRECT CONSTRUCTION COSTS				
Residential Site Work & Structures	\$84,232,540	\$745,421	\$647	64%
Contractor's Overhead & Profit	\$2,446,355	\$21,649	\$19	2%
General Conditions	\$3,821,125	\$33,815	\$29	3%
Construction Contingency	\$7,294,108	\$64,550	\$56	6%
Contractor's Bond & Insurance	\$1,205,056	\$10,664	\$9	1%
TOTAL CONSTRUCTION COSTS	<u>\$98,999,184</u>	<u>\$876,099</u>	<u>\$761</u>	<u>76%</u>
INDIRECT COSTS				
Local Permits and Impact Fees	\$1,801,704	\$15,944	\$14	1%
Architectural and Engineering Fees	\$5,457,874	\$48,300	\$42	4%
Consultants and Professional Services	\$2,249,443	\$19,907	\$17	2%
Developers Fee	\$12,661,749	\$112,051	\$97	10%
Relocation	\$263,000	\$2,327	\$2	0%
Legal	\$318,000	\$2,814	\$2	0%
TOTAL INDIRECT COSTS	<u>\$22,751,770</u>	<u>\$201,343</u>	<u>\$175</u>	<u>17%</u>
FINANCING COSTS				
Construction Loan Interest	\$5,351,504	\$47,358	\$41	4%
Construction Loan Fees/Expenses	\$675,143	\$5,975	\$5	1%
Permanent Loan Fees/Expenses	\$314,501	\$2,783	\$2	0%
Tax Credit/Bond Costs	\$179,279	\$1,587	\$1	0%
Accrued Interest, soft loans	\$530,175	\$4,692	\$4	0%
Capitalized Reserves	\$1,408,472	\$12,464	\$11	1%
Soft cost contingency	\$471,246	\$4,170	\$4	0%
TOTAL FINANCING COSTS	<u>\$8,930,320</u>	<u>\$79,029</u>	<u>\$69</u>	<u>7%</u>
RENT-UP COSTS				
Marketing /Advertising Expense	150,000	1,327	\$ 1.15	0%
Common Area Furnishings	175,000	1,549	\$ 1.34	0%
TOTAL RENT UP/MARKETING COSTS	<u>325,000</u>	<u>2,876</u>	<u>\$ 2.50</u>	<u>0%</u>
TOTAL DEVELOPMENT COSTS	<u>\$131,036,275</u>	<u>\$1,159,613</u>	<u>\$1,007</u>	<u>100%</u>

Exhibit D
PLHA Program Requirements

Funds awarded to the Borrower and expended by the Borrower shall be used for eligible activities set forth in Exhibit F as required by the PLHA statutes.

Borrower also agree to comply with all conditions required by the PLHA statutes set forth in Exhibit H and I

The following additional requirements shall apply:

1. Core Practices

Borrower must provide eligible activities in a manner consistent with the housing first practices described in California Code of Regulations, title 25, section 8409(b)(1)-(6). A Borrower allocated funds for eligible activities that provide permanent housing shall incorporate the core components of Housing First as provided in Section 8255(b) of the Welfare and Institution Code.

2. Monitoring

Onsite monitoring shall occur whenever determined necessary but at least once during the term of the Agreement.

California Department of Housing and Community Development (HCD) may also monitor the Borrower as HCD deems appropriate based on a risk assessment.

As requested, Borrower shall submit all PLHA monitoring documentation necessary to ensure continued compliance with PLHA requirements. Such documentation requirements and submission deadline shall be provided by HCD at the time such information is requested from the City.

3. Record Keeping Guidelines

Borrower to maintain records of PLHA activity costs, demographic information of residents, project information and status.

PLHA records to be used for City report submission to HCD due annually on July 31.

4. PLHA Funding Disbursement

PLHA eligible expenses include costs associated with development of new multifamily rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households. However, PLHA funds can only be used for reimbursable expenses incurred on and after October 18, 2022.

PLHA funds must be expended by September 30, 2024.

EXHIBIT E

PLHA Standard Agreement and PLHA Amendment

Insert City of Daly City PLHA Agreement w/ State here.

Exhibit E - PLHA Standard Agreement

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL
SERVICES
STANDARD AGREEMENT
STD 213 (Rev. 03/2010)

AGREEMENT NUMBER
20-PLHA-15828

PURCHASING AUTHORITY NUMBER (if applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
City of Daly City

2. The term of this Agreement is:

START DATE

Upon HCD Approval

THROUGH END DATE

06/30/2030

3. The maximum amount of this Agreement is:

\$611,821.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	5
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit C*	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D	PLHA Program Terms and Conditions	8
Exhibit E	Program-Specific Provisions and Special Conditions	2
TOTAL NUMBER OF PAGES ATTACHED		19

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at <https://www.dgs.ca.gov/OLG/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Daly City

CONTRACTOR BUSINESS ADDRESS
333 90th Street

CITY
Daly City

STATE
CA

ZIP
94015

PRINTED NAME OF PERSON SIGNING
Shawna Maltbie

TITLE
City Manager

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

4/2/21

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS
2020 W. El Camino Ave., Suite 130

CITY
Sacramento

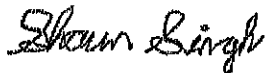
STATE
CA

ZIP
95833

PRINTED NAME OF PERSON SIGNING
Shaun Singh

TITLE
Contracts Manager,
Business & Contract Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE



California Department of General Services Approval (or exemption, if applicable)

6/25/2021

Exempt per; SCM Vol. 1 4.04.A.3 (DGS memo dated 8/12/1981)

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
ADMINISTRATION AND MANAGEMENT DIVISION****Business and Contract Services Branch**

2020 W. El Camino Avenue, Suite 130, 95833

P. O. Box 962084

Sacramento, CA 94262-2084

(916) 263-6928 / FAX (916) 263-6917

www.hcd.ca.gov

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Shawna Maltbie, City Manager
City of Daly City
333 90th Street
Daly City, CA 94015

Dear Shawna Maltbie:

RE: City of Daly City
Contract No. 20-PLHA-15626

Congratulations on your Permanent Local Housing Allocation (PLHA) Program NOFA award. Attached is an electronic copy of the Standard Agreement with Exhibits A through E:

A. Standard Agreement Contents (STD 213 and Exhibits A through E)**STD 213 – Cover page****Exhibit A – Authority, Purpose and Scope of Work****Exhibit B – Budget Detail and Payment Provisions****Exhibit C* – State of California General Terms and Conditions - GTC 04/2017**

**Exhibit C is now incorporated by reference; please see the STD 213 for additional information.*

Exhibit D – PLHA General Terms and Conditions**Exhibit E – Special Conditions****B. For expeditious handling of the contract, the Department offers two options for returning signed STD 213; please review and complete one of the following options:**

1. Review the entire Agreement thoroughly and, if necessary, discuss the requirements with your legal and financial advisors.

Forward to
Rose

2. The person or persons authorized by the Resolution(s), must provide an **original signature, printed name, title and date, using blue ink**, on the lower left-hand section entitled "Contractor" on the STD 213 and/or on page 2 of the STD 213, if applicable.
3. **Option One:** For electronic signature processing, reply to this Standard Agreement email notification with the attached, fully signed STD 213 page(s). All signatures must be original and in **blue ink**. All signers must be included in the reply email and confirm acceptance of e-signing the Agreement.
4. **Option Two:** Print one copy of the Standard Agreement, STD 213. Do not send photocopies of the signed STD 213 page(s). The copy must be an original, **wet signature and in blue ink**; do not return the Exhibits to HCD.
5. **Note:** If the resolution did not authorize a designated official to sign the STD 213 and amendments thereto, your governing body must adopt a resolution authorizing a designated official(s) to sign the STD 213 and any subsequent amendments. If the authorized designee as reflected in the resolution, the awarded NOFA amount or your entity status has changed, you are required to provide, to the Department, a new resolution consistent with the terms of the NOFA award and adopted by your Board.
6. Return the e-signed copy or the signed copy of the STD 213; and, if applicable, the certified resolution within 30 days from the date of this letter to the following address:
Department of Housing and Community Development
Business & Contract Services Branch
Contracts Office, Attention: Shannon Miller
2020 W. El Camino Avenue, Suite 130
Sacramento, CA 95833
7. Maintain a complete electronic version of the STD 213 and Exhibits for your pending file. **Note:** The Standard Agreement contract is not effective until it is signed by the Awardee's designated official and the Department.

The Department reserves the right to cancel any pending Standard Agreement in its entirety if not returned within the required 30-day period.

City of Daly City
20-PLHA-15626
Page 3 of 3

Please contact Douglas Truong, PLHA Program Manager, Program Design and Implementation Branch, at (916) 263-5022 or Douglas.Truong@hcd.ca.gov, if you have any questions regarding the Standard Agreement or the provisions therein.

Sincerely,

A handwritten signature in cursive script that reads "Shannon Miller".

Shannon Miller
Contract Analyst

cc: Douglas Truong, PLHA Program Manager, Program Design and Implementation Branch

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER

20-PLHA-16820

PURCHASING AUTHORITY NUMBER (if applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME

City of Daly City

2. The term of this Agreement is:

START DATE

Upon HCD Approval

THROUGH END DATE

06/30/2030

3. The maximum amount of this Agreement is:

\$611,821.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	5
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit C*	State of California General Terms and Conditions	STC - 04/2017
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Exhibit E	Program-Specific Provisions and Special Conditions	2
TOTAL NUMBER OF PAGES ATTACHED		19

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/CLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Daly City

CONTRACTOR BUSINESS ADDRESS

333 90th Street

CITY

Daly City

STATE

CA

ZIP

94015

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave., Suite 130

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Shaun Singh

TITLE

Contracts Manager,
Business & Contract Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

California Department of General Services Approval (or exemption, if applicable)

Exempt per: SCM Vol. 1 4.04.A.3 (DGS memo dated 6/12/1981)

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

1. Authority

Pursuant to Part 2 Chapter 2.5 of Division 31 of the Health and Safety Code (commencing with Section 50470) Statutes of 2017 (SB 2, Atkins), which created the Building Homes and Jobs Trust Fund and the Permanent Local Housing Allocation ("PLHA") Program ("Program"), this Standard Agreement along with all its exhibits (the "Agreement") is entered under the authority of and in furtherance of the Program. Pursuant to Health and Safety Code, Section 50470 (b), the California Department of Housing and Community Development (referred to herein as "HCD" or "Department") has issued a Notice of Funding Availability (the "NOFA"), dated February 26, 2020, to govern administration of the fund and carry out the Program.

2. Purpose

In accordance with the authority cited above, an application was made to the State (the "Application") for assistance from the Program for the purpose of making funding available to eligible local governments in California for housing related projects and programs that assist in addressing the unmet housing needs of their local communities. By entering into this Agreement and thereby accepting the award of the PLHA grant funds (the "Grant"), the Contractor (sometimes referred to herein as the "Applicant") agrees to comply with the terms and conditions of the NOFA, this Agreement, the representations contained in the Application, and the requirements of the authorities cited above.

3. Definitions

Capitalized terms not otherwise defined herein shall have the meaning of the definitions set forth in Health and Safety Code Section 50470 and Section 101 of the Guidelines.

4. Scope of Work

- A. The scope of work ("Work") for this Agreement shall consist of one or more of the following eligible uses:
 - 1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households, including necessary Operating subsidies.

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: 02/26/2020
Approved Date: 10/05/2020
Prep. Date: 03/02/2021

EXHIBIT A

- 2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for a term of no less than thirty days.
- 3) Matching portions of funds placed into local or regional housing trust funds.
- 4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
- 5) Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing.
- 6) Assisting persons who are experiencing or at risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
 - a) This Activity may include subawards to Administrative Entities as defined in HSC Section 50490(a)(1-3) that were awarded California Emergency Solutions and Housing (CESH) program or Homeless Emergency Aid Program (HEAP) funds for rental assistance to continue assistance to these households.
 - b) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6) and in compliance with WIC Section 8255(b)(8). An Applicant allocated funds for the new construction, rehabilitation, and preservation of Permanent supportive housing shall incorporate the core components of Housing First, as provided in WIC Section 8255, subdivision (b).

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: 02/26/2020
Approved Date: 10/05/2020
Prep. Date: 03/02/2021

EXHIBIT A

- 7) Accessibility modifications in Lower-Income Owner-occupied housing.
 - 8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.
 - 9) Homeownership opportunities, including, but not limited to, down payment assistance.
 - 10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more Affordable housing Projects, or matching funds invested by a county in an Affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an Affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low interest deferred loan to the Affordable housing Project.
- B. A Local government that receives an allocation shall use no more than five percent of the allocation for costs related to the administration of the Activity(ies) for which the allocation was made. Staff and overhead costs directly related to carrying out the eligible activities described in Section 301 are "activity costs" and not subject to the cap on "administrative costs." A Local government may share any funds available for administrative costs with entities that are administering its allocation.
- C. Two or more local governments that receive PLHA allocations may expend those moneys on an eligible jointly funded project as provided in Section 50470 (b)(2)(B)(ii)(IV). An eligible jointly funded project must be an eligible Activity pursuant to Section 301(a) and be located within the boundaries of one of the Local governments.
- D. Entitlement Local governments may use the flow of PLHA funds to incentivize private lender loans and to guarantee payments for some or all public agency bond financings for activities consistent with the uses identified in Section 301 "Eligible Activities". This loan guarantee Activity must be identified and fully explained in the Applicant's "Plan".

EXHIBIT A

5. Department Contract Coordinator

The Department's Contract Coordinator for this Agreement is the Division of Financial Assistance, Grant Management Section PLHA Manager or their designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the Department Contract Coordinator at the following address:

California Department of Housing and Community Development
Attention: Permanent Local Housing Allocation (PLHA)
Grant Management Section, Suite 400
2020 West El Camino Avenue, CA 95833
P. O. Box 952050
Sacramento, CA 94252-2050

6. Contractor Contract Coordinator

The Contractor's contract coordinator for this Agreement is the Authorized Representative listed below. Unless otherwise informed, any notice, report, or other communication required by this Agreement may be mailed by first class mail, or sent through a commercial courier to the Authorized Representative at the following address:

Authorized Representative Name:	Shawna Maltbie
Authorized Representative Title:	City Manager
Agency Name:	City of Daly City
Address:	333 90th Street Daly City, CA 94015
Phone No.:	(650) 991-8127
Email Address:	<u>citymanager@dalycity.org</u>

7. Effective Date, Term of Agreement, and Deadlines

- change manually*
- A. This Agreement is effective upon approval by the Department, which is the date executed by all parties (such date, the "Effective Date").
- B. This Agreement shall terminate on June 30, 2030.

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: 02/26/2020
Approved Date: 10/05/2020
Prep. Date: 03/02/2021

EXHIBIT A

- C. Except for predevelopment expenses for construction projects funded by PLHA and costs to develop and prepare the Plan and the PLHA application, no costs incurred more than one year prior to commitment by the Local government may be paid from PLHA funds. Reimbursement of expenses to prepare the Plan and the PLHA application are subject to the cap on administrative fees.
- D. Any Grant funds which have not been expended by the expenditure deadline shall be disencumbered and revert to the Department. The expenditure deadline is fifty-eight months from the date of the budget appropriation for each year of funds included in this Agreement.

EXHIBIT B.

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Budget Detail

The budget detail is contained in Exhibit E in this Agreement.

Contractor will be responsible for maintaining oversight of grant amounts and determining whether an amended PLHA Plan is required due to reallocation of more than ten percent among Activities funded per Section 302(c)(5).

2. Conditions of Disbursement

Prior to receiving any Grant funds, the Contractor shall submit the following for the Department's approval:

- ✓ A. Government TIN Form, as applicable.
- B. No funding will be disbursed to Contractor unless Contractor and any delegating Local government has an approved Housing Element and is in compliance with the Housing Element Annual Progress Report requirements, pursuant to PLHA Program Guidelines section 302(a) and (b).
- C. Contractor shall not be eligible to receive a new allocation if the Contractor has accrued an uncommitted amount of four times the pending allocation if the pending allocation is \$125,000 or less; or \$500,000 if the pending allocation is greater than \$125,000 and less than \$500,000; or the amount of the pending allocation if the allocation is \$500,000 or more.

3. Performance

- A. All funds must be disbursed within fifty-eight months of the budget appropriation. Funds that are not disbursed within fifty-eight months of the budget appropriation will revert to the Housing Rehabilitation Loan Fund.

4 years

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: 02/26/2020
Approved Date: 10/05/2020
Prep. Date: 03/02/2021

EXHIBIT B

- B. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be reduced proportionate to those years already allocated, calculated at the time that the appropriation is reduced or terminated and reduced accordingly. All subsequent years shall be terminated, and the grant agreement shall be of no further force and effect, after amounts due for the period upon the reduced appropriation or termination are returned by the Contractor to the State. In this event, the State and Contractor shall be relieved of any and all obligations under this Agreement. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the sole discretion to cancel this Agreement without cause, no liability occurring to the State, or amend the Agreement and amount allocated to Contractor.

4. **Fiscal Administration**

- A. The Contractor may request a disbursement of 100 percent of total awarded Grant funds after executing the Standard Agreement. Administrative costs related to the planning and execution of eligible activities shall not exceed five percent of the Grant amount. *con from immediately not requirement*
- B. A separate checking account for the Grant funds is not required. However, the Contractor shall deposit Grant funds in an interest-bearing checking or savings account insured by the federal or state government. All interest earned from the deposit of Grant funds shall be used for eligible Program activities and accounted for in Contractor's annual report.
- C. The Contractor shall make a good faith effort to minimize the number of disbursement requests by anticipating and requesting funds in advance.
- D. The Contractor may request that Grant funds awarded for a certain eligible activity be moved to another activity without an amendment to this Agreement. This request must be made in writing to HCD if the change from one activity to another exceeds ten percent of the grant amount and shall be effective only upon written HCD approval. HCD's decision to approve or deny any such request shall be final, absent fraud, mistake or arbitrariness per Section 302(c)(5).

EXHIBIT B

5. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the subsequent years covered under this Agreement does not appropriate sufficient funds for the program this Agreement shall remain in force and effect until the time of notice of reduced or terminated appropriation. The Agreement shall be terminated by the State by providing Contractor written notice of not less than thirty days prior to the effective date of the termination. In the event of termination by the State due to lack of Budget appropriation, the State and Contractor shall be relieved of any and all obligations under this Grant Agreement on the effective date of termination and the Contractor shall return the amount for subsequent year allocations.
- B. Subject to Section 5A. above, if funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the sole discretion to cancel this Agreement without cause, no liability occurring to the State, or amend the current Grant Agreement and amount allocated to Contractor.

EXHIBIT D

PLHA PROGRAM TERMS AND CONDITIONS

1. Effective Date, Commencement of Work

This Agreement is effective upon the date of the Department representative's signature on page one of the fully executed Standard Agreement, STD 213. Contractor agrees that work under this agreement shall not commence until execution of the STD 213, (the "Effective Date").

2. Strict Compliance

Contractor will strictly comply with the terms, conditions and requirements of the Permanent Local Housing Allocation (PLHA) Statutes, Guidelines, the Notice of Funding Availability (NOFA), and this Agreement.

3. Contractor's Application for Funds

- A. Contractor has submitted to the Department an Application for a Grant under the Program. The Department is entering into this Agreement based on, and in substantial reliance upon, Contractor's facts, information, assertions and representations contained in that Application, and in any subsequent modifications or additions thereto approved by the Department. The Application and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. Contractor warrants that all information, facts, assertions and representations contained in the Application and approved modifications and additions thereto are true, correct, and complete to the best of Contractor's knowledge. In the event that any part of the Application and any approved modification and addition thereto is untrue, incorrect, incomplete, or misleading in such a manner that would substantially affect the Department's approval, disbursement, or monitoring of the funding and the Grants or activities governed by this Agreement, then the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

EXHIBIT D

4. Eligible Activities

Grant funds awarded to the Contractor and expended by either the Contractor or any entity to which Contractor awards funds shall be used for the eligible activities set forth in Exhibit A as required by the PLHA Statutes. The following additional requirements shall apply:

- A. Each Contractor shall submit a Plan detailing:
- 1) The manner in which allocated funds will be used for eligible activities.
 - 2) A description of the way the Local government will prioritize investments that increase the supply of housing for households with incomes at or below sixty percent of AMI. Programs targeted at households at or below sixty percent of AMI will be deemed to meet this requirement.
 - 3) A description of how the Plan is consistent with the programs set forth in the Local government's Housing Element.
 - 4) Evidence that the Plan was authorized and adopted by resolution by the Local government and that the public had an adequate opportunity to review and comment on its content.
 - 5) The following for each proposed Activity:
 - a) A description of each proposed Activity, pursuant to Section 301 of the Guidelines and the percentage of funding allocated to it. The description shall specifically include the percentage of funds, if any, directed to Affordable Owner-Occupied Workforce Housing (AOWH).
 - b) The projected number of households to be served at each income level and a comparison to the unmet share of the Regional Housing Needs Allocation (RHNA) at each income level.
 - c) A description of major steps/actions and a proposed schedule required for the implementation and completion of the Activity.
 - d) The period of affordability and level of affordability for each Activity. Rental Projects are required to have affordability periods of at least fifty-five years.

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: 02/26/2020
Approved Date: 10/05/2020
Prep. Date: 03/02/2021

EXHIBIT D

- 6) The Plan is required to be for a term of five years. Local governments shall obtain approval of the Department for amendments made to the Plan in each succeeding year of the term of the Plan. Reallocations of more than ten percent of funds among Activities require amendment of the Plan, with approval granted by the governing body at a publicly noticed public meeting.
- 7) If funds are used for the acquisition, construction, or rehabilitation of for-sale housing projects or units within for-sale housing projects, the grantee shall record a deed restriction against the property that will ensure compliance with one of the following requirements if the property is no longer the primary residence of the homeowner due to sale, transfer or lease, unless it is in conflict with the requirements of another public funding source or law:
 - a) PLHA loan and any interest thereon shall be repaid to the Local government's PLHA account. The Local government shall reuse the repayments consistent with the Eligible Activities per Section 301 of the Guidelines; or,
 - b) The initial owner and any subsequent owner shall sell the home at an Affordable housing cost to a qualified Lower-Income or Moderate-Income household; or,
 - c) The homeowner and the Local government shall share the equity in the unit pursuant to an equity-sharing agreement. The grantee shall reuse the proceeds of the equity-sharing agreement consistent with the Eligible Activities per Section 301 of the Guidelines.
- 8) If funds are used for the development of an affordable rental housing project, the Local government shall make the PLHA assistance in the form of a loan to the Sponsor of the project. The loan shall be evidenced through a Promissory Note secured by a Deed of Trust.
- 9) A program income reuse plan describing how repaid loans shall be reused for eligible activities specified in Section 301 of the Guidelines.

EXHIBIT D

5. Core Practices

- A. A Contractor or Subrecipient must provide eligible activities in a manner consistent with the housing first practices described in California Code of Regulations, title 25, section 8409(b)(1)-(6). A Contractor or Subrecipient allocated funds for eligible activities that provide permanent housing shall incorporate the core components of Housing First as provided in Section 8255(b) of the Welfare and Institutions Code.

6. Monitoring Grant Activities

- A. Contractor shall monitor the activities selected and awarded by them to ensure compliance with PLHA requirements. An onsite monitoring visit of Subrecipients and any other service providers shall occur whenever determined necessary by the Contractor, but at least once during the Grant period.
- B. The Department will monitor the performance of the Contractor based on a risk assessment and according to the terms of this Agreement. The Department may also monitor any Subrecipients of the Contractor as the Department deems appropriate based on a risk assessment.
- C. As requested by the Department, the Contractor shall submit to the Department all PLHA monitoring documentation necessary to ensure that Contractor and its Subrecipients are in continued compliance with PLHA requirements. Such documentation requirements and the submission deadline shall be provided by the Department at the time such information is requested from the Contractor.

7. Reporting/Audits

- A. Commencing with the Effective Date of this Agreement and continuing through the Expiration Date, the Contractor shall submit an annual report to the Department by July 31 of each year that reports all activities from the previous fiscal year (7/1-6/30), on forms provided by the Department.

The first report will be due on July 31, 2021 and will report all activities from date of initial fund disbursement through June 30, 2021.

- B. The annual report shall contain a detailed report which must include, at a minimum:
- 1) Identification of the Eligible Activities to which the Contractor committed program funds, and the income levels of households assisted.

EXHIBIT D

- 2) Amounts awarded to Subrecipients with the activity(ies) identified;
 - 3) Identification of the Eligible Activities upon which the Contractor expended program funds, and the income levels of households assisted and the affordability level for any units assisted; and,
 - 4) Close out report for contracts that were fully expended and in which all activities funded were completed during the fiscal year.
- C. The Department may request additional information as needed to meet other applicable reporting or audit requirements.
- D. The Contractor is responsible for the completion of audits and all costs of preparing audits.
- E. The Department reserves the right to perform or cause to be performed a financial audit. At the Department's request, the Contractor shall provide, at its own expense, a financial audit prepared by a certified public accountant.
- F. If a financial audit is required by the Department, the audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in 24 CFR 85.36.
- 1) The Contractor shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by the Department to the independent auditor's working papers.
 - 2) The Contractor is responsible for the completion of audits and all costs of preparing audits.
 - 3) If there are audit findings, the Contractor must submit a detailed response acceptable to the Department for each audit finding within ninety (90) days from the date of the audit finding report.

8. Retention and Inspection of Records

- A. The Contractor is responsible for maintaining records, which fully disclose the activities funded by the Grant. Adequate documentation of each transaction shall be maintained to permit the determination, through an audit if requested by the State, of the accuracy of the records and the allowability of expenditures charged to Grant funds.

EXHIBIT D

- B. The Contractor agrees that the Department or its designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement. The Contractor agrees to provide the Department or its designee, with any relevant information requested. The Contractor agrees to permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the PLHA Statutes, the NOFA, and this Agreement.

- 6/30/2020 C. The Contractor further agrees to retain all records for a period of five years after the end of the term of this Agreement:

- 1) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained until completion of the action and resolution of all issues, which arise from it.

- 2) The Contractor also agrees to include in any contract that it enters into in an amount exceeding \$10,000, the Department's right to audit the contractor's records and interview their employees. The Contractor shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Code Section 10115.10.

- D. The determination by the Department of the eligibility of any expenditure shall be final. If the eligibility of any expenditure cannot be determined because records or documentation are inadequate, the expenditure may be disallowed, and HCD shall determine the reimbursement method for the amount disallowed.

- E. The Contractor shall retain all books and records relevant to this Agreement for a minimum of five years after the end of the term of this Agreement. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five years after the conclusion or resolution of the matter.

9. Breach and Remedies

- A. The following shall each constitute a breach of this Agreement:

- 1) Contractor's failure to comply with the terms of this Agreement.

Permanent Local Housing Allocation (PLHA) Program – Grant

NOFA Date: 02/26/2020

Approved Date: 10/05/2020

Prep. Date: 03/02/2021

EXHIBIT D

- 2) Use of, or permitting the use of, Grant funds provided under this Agreement for any ineligible costs or for activities not approved under this Agreement.
 - 3) Any failure to comply with the deadlines set forth in this Agreement.
- B. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department may:
- 1) Bar the Contractor from applying for future PLHA and other HCD funds;
 - 2) Revoke any other existing PLHA award(s) to the Contractor;
 - 3) Require the return of any unexpended PLHA funds disbursed under this Agreement;
 - 4) Require repayment of PLHA funds disbursed and expended under this agreement;
 - 5) Require the immediate return to the Department of all funds derived from the use of PLHA funds including, but not limited to recaptured funds and returned funds;
 - 6) Seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the technical assistance in accordance with the PLHA Program requirements; and,
 - 7) Seek such other remedies as may be available under the relevant agreement or any law.
- C. All remedies available to the Department are cumulative and not exclusive.
- D. The Department may give written notice to the Contractor to cure the breach or violation within a period of not less than fifteen days.

EXHIBIT D

10. Termination

- A. The Department may terminate this Agreement at any time for cause by giving a minimum of thirty days' notice of termination, in writing, to the Contractor. Cause shall consist of, violations of any terms and/or special conditions of this Agreement, the PLHA Statutes, or the NOFA. Upon termination of this Agreement, unless otherwise approved in writing by the Department, any unexpended funds received by the Contractor shall be returned to the Department within thirty days of the notice of termination.
- B. This Agreement is subject to any additional restrictions, limitations or conditions, or statute, regulations or any other laws, whether federal or those of the State of California, or of any agency, department, or any political subdivision of the federal or the State of California governments, which may affect the provisions, terms or funding of this Agreement in any manner.
- C. The Department has the option to terminate this Agreement under the thirty-day cancellation clause or to amend this Agreement to reflect any reduction of funds.

11. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time, performance by the Contractor of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

12. Relocation

Contractor shall comply with all requirements of applicable California relocation law (Gov. Code, § 7260 et seq. and the regulations promulgated thereunder at Cal. Code Regulations, Title. 25, § 6000 et seq.). Any relocation plan for the Development shall be subject to the review and approval by the State.

EXHIBIT D

13. Special Conditions Contractors and Subrecipients

The Contractor agrees to comply with all conditions of this Agreement including the Special Conditions set forth in Exhibit E. These conditions shall be met to the satisfaction of the Department prior to disbursement of funds. The Contractor shall ensure that all Subrecipients are made aware of and agree to comply with all conditions of this Agreement and the applicable State requirements governing the use of Grant funds. The Contractor shall ensure that all Subrecipients are qualified to do business and in good standing with the California Secretary of State and the California Franchise Tax Board. Failure to comply with these conditions may result in cancellation of this Agreement.

14. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

The Contractor agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Grant, the Contractor, its Subrecipients, and any other Grant activity.

15. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Contractor shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

EXHIBIT E

PROGRAM-SPECIFIC PROVISIONS AND SPECIAL CONDITIONS

1. Program-Specific Provisions

The following are project-specific terms and conditions (referred to as enumerated provision(s) for ease of reference in prior exhibits) and shall inform the references made to project-specific information not contained in those prior exhibits.

Budget Detail:

Contractor has been awarded the following grant activity amounts for 2019: **\$511,821**

Estimated five-year allocation may not exceed: **\$3,070,926**

Payees:

A. The authorized Payee(s) is/are as specified below:

Name: City of Daly City

Amount: \$511,821

Plan:

Activity 1 - Daly City will use its allocated PLHA funds to provide predevelopment loans and permanent financing for the development and construction of new rental housing. Loan funds will be disbursed on a reimbursement basis to developers. All loans will have a regulatory agreement memorializing a 55-year affordability term and secured by a Deed of Trust. Loans will be deferred payment, residual receipts loans with an interest rate of one percent.

Funding Allocation Year	2019	2020	2021	2022	2023
Type of Activity	Affordable Rental Housing	Affordable Rental Housing	Affordable Rental Housing	Affordable Rental Housing	Affordable Rental Housing
Percentage of Funds Allocated for Each Activity	95%	95%	95%	95%	95%
Area Median Income Level Served	60%	60%	60%	60%	60%
Administrative Costs	5%	5%	5%	5%	5%
Total	100%	100%	100%	100%	100%

Permanent Local Housing Allocation (PLHA) Program - Grant
NOFA Date: 02/26/2020
Approved Date: 10/05/2020
Prep. Date: 03/02/2021

EXHIBIT E

2. Special Conditions

The following Special Conditions are applicable to this Standard Agreement:

None.

Permanent Local Housing Allocation (PLHA) Program - Grant
NOFA Date: 02/26/2020
Approved Date: 10/05/2020
Prep. Date: 03/02/2021

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**ADMINISTRATION AND MANAGEMENT DIVISION****Business and Contract Services Branch**

2020 W. El Camino Avenue, Suite 130, 95833

P. O. Box 952054

Sacramento, CA 94252-2054

(916) 263-6928 / FAX (916) 263-8917

www.hcd.ca.gov

June 10, 2022

Shawwna Maltbie, City Manager
City of Daly City
333 90th Street
Daly City, CA 94015

Dear Shawwna Maltbie:

**RE: City of Daly City, Standard Agreement Amendment 1
Contract No. 20-PLHA-15626, Am. 1 (Rev. 02/2022)**

Attached is an electronic copy of the Amended Standard Agreement, Am. 1 with Exhibits A and E:

A. Standard Agreement Contents (STD 213A and Exhibits A and E)

STD 213A – Cover page

Exhibit A, Am.1 (Rev. 02/2022) – Authority, Purpose and Scope of Work

Exhibit E, Am.1 (Rev. 02/2022) – Program-Specific Provisions and Special Conditions

B. For expeditious handling of the contract, the Department offers two options for returning signed STD 213A; please review and complete one of the following options:

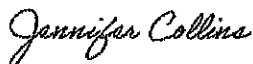
1. Review the entire Agreement thoroughly and, if necessary, discuss the requirements with your legal and financial advisors.
2. The person or persons authorized by the Resolution(s), must provide an **original signature, printed name, title and date, using blue ink**, on the lower left-hand section entitled "Contractor" on the STD 213A and/or on page 2 of the STD 213A, if applicable.
3. **Option One:** For electronic signature processing, reply to this Standard Agreement email notification with the attached, fully signed STD 213A page(s). All signatures must be original and in **blue ink**. All signers must be included in the reply email and confirm acceptance of e-signing the Agreement.

4. **Option Two:** Print one copy of the Standard Agreement, STD 213A. Do not send photocopies of the signed STD 213A page(s). The copy must be an original, **wet** signature and in **blue ink**; do not return the Exhibits to the Department.
5. **Note:** If the resolution did not authorize a designated official to sign the STD 213A and amendments thereto, your governing body must adopt a resolution authorizing a designated official(s) to sign the STD 213A and any subsequent amendments. If the authorized designee as reflected in the resolution, the awarded NOFA amount or your entity status has changed, you are required to provide, to the Department, a new resolution consistent with the terms of the NOFA award and adopted by your Board.
6. Return the e-signed copy or the signed copy of the STD 213A; and, if applicable, the certified resolution within 30 days from the date of this letter to the following address:
Department of Housing and Community Development
Business & Contract Services Branch
Contracts Office, Attention: Viet Luong
2020 W. El Camino Avenue, Suite 130
Sacramento, CA 95833
7. Maintain a complete electronic version of the STD 213A and Exhibits A and E, Am. 1 (Rev. 02/2022) for your pending file. **Note:** **The Standard Agreement contract is not effective until it is signed by the Awardee's designated official and the Department.**

The Department reserves the right to cancel any pending Standard Agreement in its entirety if not returned within the required 30-day period.

Please contact Terri Wright, PLHA Program Representative, Program Design and Implementation Branch, at (916) 776-7749 or email terri.wright@hcd.ca.gov, if you have any questions regarding the Standard Agreement or the provisions therein.

Sincerely,



Jennifer Collins
Contract Analyst

cc: Terri Wright, PLHA Program Representative, Program Design and Implementation Branch

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES SCO ID:

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev 04/2020)

AGREEMENT NUMBER

AMENDMENT NUMBER

Purchasing Authority
Number☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 7 PAGES

20-PLHA-16628

1

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

City of Daly City

2. The term of this Agreement is:

START DATE

06/25/2021

THROUGH END DATE

06/30/2030

3. The maximum amount of this Agreement after this Amendment is:

\$1,307,350.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

This amendment is to add May 3, 2021 NOFA funds to contract.

Exhibit A, Authority, Purpose and Scope of Work, is hereby deleted in its entirety and replaced with new Exhibit A, Authority, Purpose and Scope of Work, Am. 1 (Rev. 2/2022) attached hereto and made a part hereof.

Exhibit E, Program-Specific Provisions and Special Conditions, is hereby deleted in its entirety and replaced with new Exhibit E, Program-Specific Provisions and Special Conditions, Am. 1 (Rev. 2/2022) attached hereto and made a part hereof.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc.)

City of Daly City

CONTRACTOR BUSINESS ADDRESS

333 90th Street

CITY

Daly City

STATE

CA

ZIP

94015

PRINTED NAME OF PERSON SIGNING

Shawna Maltbie

TITLE

City Manager

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave., Suite 130

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Sukphreet Martinez

TITLE

Contracts Manager, Business & Contract Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICE APPROVAL

EXEMPTION (If Applicable)

Exempt per: SCM Vol. 1 4.04.A.3 (DGS memo dated 08/12/1981)

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

1. Authority

Pursuant to Part 2 Chapter 2.5 of Division 31 of the Health and Safety Code (commencing with Section 50470) Statutes of 2017 (SB 2, Atkins), which created the Building Homes and Jobs Trust Fund and the Permanent Local Housing Allocation ("PLHA") Program ("Program"), this Standard Agreement along with all its exhibits (the "Agreement") is entered under the authority of and in furtherance of the Program. Pursuant to Health and Safety Code, Section 50470 (b), the California Department of Housing and Community Development (referred to herein as "HCD" or "Department") has issued a Notice of Funding Availability (the "NOFA"), dated February 26, 2020, to govern administration of the fund and carry out the Program.

2. Purpose

In accordance with the authority cited above, an application was made to the State (the "Application") for assistance from the Program for the purpose of making funding available to eligible local governments in California for housing related projects and programs that assist in addressing the unmet housing needs of their local communities. By entering into this Agreement and thereby accepting the award of the PLHA grant funds (the "Grant"), the Contractor (sometimes referred to herein as the "Applicant") agrees to comply with the terms and conditions of the NOFA, this Agreement, the representations contained in the Application, and the requirements of the authorities cited above.

3. Definitions

Capitalized terms not otherwise defined herein shall have the meaning of the definitions set forth in Health and Safety Code Section 50470 and Section 101 of the Guidelines.

4. Scope of Work

- A. The scope of work ("Work") for this Agreement shall consist of one or more of the following eligible uses:
- 1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households, including necessary Operating subsidies.

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: (RD 1) 02/26/2020, (RD 2) 05/03/2021
Approved Date: 10/05/2020
Prep. Date: 03/09/2022

EXHIBIT A

- 2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for a term of no less than thirty days.
- 3) Matching portions of funds placed into local or regional housing trust funds.
- 4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
- 5) Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing.
- 6) Assisting persons who are experiencing or at risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
 - a) This Activity may include subawards to Administrative Entities as defined in HSC Section 50490(a)(1-3) that were awarded California Emergency Solutions and Housing (CESH) program or Homeless Emergency Aid Program (HEAP) funds for rental assistance to continue assistance to these households.
 - b) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6) and in compliance with WIC Section 8255(b)(8). An Applicant allocated funds for the new construction, rehabilitation, and preservation of Permanent supportive housing shall incorporate the core components of Housing First, as provided in WIC Section 8255, subdivision (b).

EXHIBIT A

- 7) Accessibility modifications in Lower-income Owner-occupied housing.
 - 8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.
 - 9) Homeownership opportunities, including, but not limited to, down payment assistance.
 - 10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more Affordable housing Projects, or matching funds invested by a county in an Affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an Affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low interest deferred loan to the Affordable housing Project.
- B. A Local government that receives an allocation shall use no more than five percent of the allocation for costs related to the administration of the Activity(ies) for which the allocation was made. Staff and overhead costs directly related to carrying out the eligible activities described in Section 301 are "activity costs" and not subject to the cap on "administrative costs." A Local government may share any funds available for administrative costs with entities that are administering its allocation.
- C. Two or more local governments that receive PLHA allocations may expend those moneys on an eligible jointly funded project as provided in Section 50470 (b)(2)(B)(ii)(IV). An eligible jointly funded project must be an eligible Activity pursuant to Section 301(a) and be located within the boundaries of one of the Local governments.
- D. Entitlement Local governments may use the flow of PLHA funds to incentivize private lender loans and to guarantee payments for some or all public agency bond financings for activities consistent with the uses identified in Section 301 "Eligible Activities". This loan guarantee Activity must be identified and fully explained in the Applicant's "Plan".

EXHIBIT A

5. Department Contract Coordinator

The Department's Contract Coordinator for this Agreement is the Division of Financial Assistance, Grant Management Section PLHA Manager or their designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the Department Contract Coordinator at the following address:

California Department of Housing and Community Development
Attention: Permanent Local Housing Allocation (PLHA)
Grant Management Section, Suite 400
2020 West El Camino Avenue, CA 95833
P. O. Box 952050
Sacramento, CA 94252-2050

6. Contractor Contract Coordinator

The Contractor's contract coordinator for this Agreement is the Authorized Representative listed below. Unless otherwise informed, any notice, report, or other communication required by this Agreement may be mailed by first class mail, or sent through a commercial courier to the Authorized Representative at the following address:

Authorized Representative Name:	Shawwna Maltble
Authorized Representative Title:	City Manager
Agency Name:	City of Daly City
Address:	333 90th Street Daly City, CA 94015
Phone No.:	(650) 991-8127
Email Address:	smaltble@dalycity.org

7. Effective Date, Term of Agreement, and Deadlines

- A. This Agreement is effective upon approval by the Department, which is the date executed by all parties (such date, the "Effective Date").
- B. This Agreement shall terminate on June 30, 2030.

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: (RD 1) 02/26/2020, (RD 2) 05/03/2021
Approved Date: 10/05/2020
Prep. Date: 03/09/2022

EXHIBIT A

- C. Except for predevelopment expenses for construction projects funded by PLHA and costs to develop and prepare the Plan and the PLHA application, no costs incurred more than one year prior to commitment by the Local government may be paid from PLHA funds. Reimbursement of expenses to prepare the Plan and the PLHA application are subject to the cap on administrative fees.
- D. Any Grant funds which have not been expended by the expenditure deadline shall be disencumbered and revert to the Department. The expenditure deadline is fifty-eight months from the date of the budget appropriation for each year of funds included in this Agreement.

EXHIBIT E

PROGRAM-SPECIFIC PROVISIONS AND SPECIAL CONDITIONS

1. Program-Specific Provisions

The following are project-specific terms and conditions (referred to as enumerated provision(s) for ease of reference in prior exhibits) and shall inform the references made to project-specific information not contained in those prior exhibits.

Budget Detail:

Contractor has been awarded the following grant activity amounts for 2019: **\$511,821** and 2020 **\$795,529** and the total of **\$1,307,350**

Estimated five-year allocation may not exceed: **\$3,070,926**

Payees:

A. The authorized Payee(s) is/are as specified below:

Name: **City of Daly City**

Amount: **\$795,529**

Plan:

Activity 1 - Daly City will use its allocated PLHA funds to provide predevelopment loans and permanent financing for the development and construction of new rental housing. Loan funds will be disbursed on a reimbursement basis to developers. All loans will have a regulatory agreement memorializing a 55-year affordability term and secured by a Deed of Trust. Loans will be deferred payment, residual receipts loans with an interest rate of one percent.

Funding Allocation Year	2019	2020	2021	2022	2023
Type of Activity	Affordable Rental Housing	Affordable Rental Housing	Affordable Rental Housing	Affordable Rental Housing	Affordable Rental Housing
Percentage of Funds Allocated for Each Activity	95%	95%	95%	95%	95%
Area Median Income Level Served	60%	60%	60%	60%	60%
Administrative Costs	5%	5%	5%	5%	5%

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: (RD 1) 02/26/2020, (RD 2) 05/03/2021
Approved Date: 10/05/2020
Prep. Date: 03/09/2022

EXHIBIT E

Total	100%	100%	100%	100%	100%
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2. Special Conditions

The following Special Conditions are applicable to this Standard Agreement:

None.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES SGO ID:

STANDARD AGREEMENT - AMENDMENT

STD 210A (Rev. 04/2020)

AGREEMENT NUMBER AMENDMENT NUMBER Purchasing Authority

I CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 7 PAGES 20-PLHA-15626 2 Number

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

City of Daly City

2. The term of this Agreement is:

START DATE

06/28/2021

THROUGH/END DATE

06/30/2023

3. The maximum amount of this Agreement after this Amendment is:

\$2,192,005.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

Exhibit A, Authority, Purpose, and Scope of Work is hereby deleted in its entirety and replaced with new Exhibit A, Authority, Purpose and Scope of Work, Am. 2 (Rev. 11/2022) attached hereto and made a part hereof.

Exhibit B, Program-Specific Provisions and Special Conditions is hereby deleted in its entirety and replaced with new Exhibit B, Program-Specific Provisions and Special Conditions, Am. 2 (Rev. 11/2022) attached hereto and made a part hereof.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc.)

City of Daly City

CONTRACTOR BUSINESS ADDRESS

333 90th Street

CITY

Daly City

STATE

CA

ZIP

94015

PRINTED NAME OF PERSON SIGNING

Thomas J. Piccolotti

TITLE

City Manager

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

5/10/23

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave., Suite 180

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICE APPROVAL

EXEMPTION (If Applicable)

Exempt per SGM Vol. 1 4.04.A.3 (ISOS memo dated 6/12/1981)

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

1. Authority

Pursuant to Part 2 Chapter 2.5 of Division 31 of the Health and Safety Code (commencing with Section 50470) Statutes of 2017 (SB 2, Atkins), which created the Building Homes and Jobs Trust Fund and the Permanent Local Housing Allocation ("PLHA") Program ("Program"), this Standard Agreement along with all its exhibits (the "Agreement") is entered under the authority of and in furtherance of the Program. Pursuant to Health and Safety Code, Section 50470 (b), the California Department of Housing and Community Development (referred to herein as "HCD" or "Department") has issued a Notice of Funding Availability (the "NOFA"), dated February 26, 2020, to govern administration of the fund and carry out the Program.

2. Purpose

In accordance with the authority cited above, an application was made to the State (the "Application") for assistance from the Program for the purpose of making funding available to eligible local governments in California for housing related projects and programs that assist in addressing the unmet housing needs of their local communities. By entering into this Agreement and thereby accepting the award of the PLHA grant funds (the "Grant"), the Contractor (sometimes referred to herein as the "Applicant") agrees to comply with the terms and conditions of the NOFA, this Agreement, the representations contained in the Application, and the requirements of the authorities cited above.

3. Definitions

Capitalized terms not otherwise defined herein shall have the meaning of the definitions set forth in Health and Safety Code Section 50470 and Section 101 of the Guidelines.

4. Scope of Work

A. The scope of work ("Work") for this Agreement shall consist of one or more of the following eligible uses:

- 1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households, including necessary operating subsidies.

Permanent Local Housing Allocation (PLHA) Program – Grant
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- 2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for a term of no less than thirty days.
- 3) Matching portions of funds placed into local or regional housing trust funds.
- 4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
- 5) Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing.
- 6) Assisting persons who are experiencing or at risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
 - a) This Activity may include subawards to Administrative Entities as defined in HSC Section 50490(a)(1-3) that were awarded California Emergency Solutions and Housing (CESH) program or Homeless Emergency Aid Program (HEAP) funds for rental assistance to continue assistance to these households.
 - b) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6) and in compliance with WIC Section 8255(b)(8). An Applicant allocated funds for the new construction, rehabilitation, and preservation of Permanent supportive housing shall incorporate the core components of Housing First, as provided in WIC Section 8255, subdivision (b).

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- 7) Accessibility modifications in Lower-income Owner-occupied housing.
 - 8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.
 - 9) Homeownership opportunities, including, but not limited to, down payment assistance.
 - 10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more Affordable housing Projects, or matching funds invested by a county in an Affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an Affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low interest deferred loan to the Affordable housing Project.
- B. A Local government that receives an allocation shall use no more than five percent of the allocation for costs related to the administration of the Activity(ies) for which the allocation was made. Staff and overhead costs directly related to carrying out the eligible activities described in Section 301 are "activity costs" and not subject to the cap on "administrative costs." A Local government may share any funds available for administrative costs with entities that are administering its allocation.
- C. Two or more local governments that receive PLHA allocations may expend those moneys on an eligible jointly funded project as provided in Section 50470 (b)(2)(B)(ii)(IV). An eligible jointly funded project must be an eligible Activity pursuant to Section 301(a) and be located within the boundaries of one of the Local governments.
- D. Entitlement Local governments may use the flow of PLHA funds to incentivize private lender loans and to guarantee payments for some or all public agency bond financings for activities consistent with the uses identified in Section 301 "Eligible Activities". This loan guarantee Activity must be identified and fully explained in the Applicant's "Plan".

EXHIBIT A

5. Department Contract Coordinator

The Department's Contract Coordinator for this Agreement is the Division of Financial Assistance, Grant Management Section PLHA Manager or their designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the Department Contract Coordinator at the following address:

California Department of Housing and Community Development
Attention: Permanent Local Housing Allocation (PLHA)
Grant Management Section, Suite 400
2020 West El Camino Avenue, CA 95833
P. O. Box 952050
Sacramento, CA 94262-2050

6. Contractor Contract Coordinator

The Contractor's contract coordinator for this Agreement is the Authorized Representative listed below. Unless otherwise informed, any notice, report, or other communication required by this Agreement may be mailed by first class mail, or sent through a commercial courier to the Authorized Representative at the following address:

Authorized Representative Name:	Thomas Picoletti
Authorized Representative Title:	Interim City Manager
Agency Name:	City of Daly City
Address:	333 90th Street Daly City, CA 94015
Phone No.:	650-991-8201
Email Address:	citymanager@dalycity.org

7. Effective Date, Term of Agreement, and Deadlines

- A. This Agreement is effective upon approval by the Department, which is the date executed by all parties (such date, the "Effective Date").
- B. This Agreement shall terminate on June 30, 2030.

Permanent Local Housing Allocation (PLHA) Program – Grant
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- C.** Except for predevelopment expenses for construction projects funded by PLHA and costs to develop and prepare the Plan and the PLHA application, no costs incurred more than one year prior to commitment by the Local government may be paid from PLHA funds. Reimbursement of expenses to prepare the Plan and the PLHA application are subject to the cap on administrative fees.
- D.** Any Grant funds which have not been expended by the expenditure deadline shall be disencumbered and revert to the Department. The expenditure deadline is fifty-eight months from the date of the budget appropriation for each year of funds included in this Agreement.

Permanent Local Housing Allocation (PLHA) Program – Grant
NOFA Date: (RD 1) 02/26/2020, (RD 2) 05/03/2021 (RD 3) 08/17/2022
Approved Date: 10/05/2020
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EXHIBIT E

PROGRAM-SPECIFIC PROVISIONS AND SPECIAL CONDITIONS

1. Program-Specific Provisions

The following are project-specific terms and conditions (referred to as enumerated provision(s) for ease of reference in prior exhibits) and shall inform the references made to project-specific information not contained in those prior exhibits.

Budget Detail:

Contractor has been awarded the following grant activity amounts for 2019: **\$511,821**

Contractor has been awarded the following grant activity amounts for 2020: **\$795,529**

Contractor has been awarded the following grant activity amounts for 2021: **\$875,455**

Estimated five-year allocation may not exceed: **\$3,070,926**

Payees:

A. The authorized Payee(s) is/are as specified below:

Name: **City of Daly City**

Amount: **\$2,182,805**

Plan:

Activity 1 - Daly City will use its allocated PLHA funds to provide predevelopment loans and permanent financing for the development and construction of new rental housing. Loan funds will be disbursed on a reimbursement basis to developers. All loans will have a regulatory agreement memorializing a 55-year affordability term and secured by a Deed of Trust. Loans will be deferred payment, residual receipts loans with an interest rate of one percent.

*Exempt from Recording fees pursuant to
Section 27383 of the Government Code*

**RECORDING REQUESTED BY
AND
WHEN RECORDED, MAIL TO:**

City of Daly City
Dept. Of Planning and Community
Development
333 60th Street
Daly City, CA 94015
Attn: City Manager

(This Space for Recorder's Use Only)

DECLARATION OF AFFORDABILITY COVENANT

MP Midway Associates 2, L.P., a California limited partnership (the "Owner") agrees that **fifty-four (54)** of the units located on the property described in the attached Exhibit "A" and more commonly known as Midway Village Phase 2 (the "Project"), shall be restricted for a period of **fifty-five (55) years** from the date of receipt of the Certificate of Occupancy in order to remain continuously affordable to lower income tenants (the "Affordability Covenant"). This Affordability Covenant shall be binding on the Owner and any and all successors in interest. Any capitalized terms used herein and not otherwise defined are defined as set forth in the Agreement.

1. The City of Daly City (the "City") – Permanent Local Housing Allocation Definitions

The following definitions shall be incorporated by reference in this Affordability Covenant:

A. Determination of the Permanent Local Housing Allocation (PLHA) Restricted Units:

An "the PLHA restricted unit" means a residential unit that is subject to rent and occupancy restrictions as a result of the financial assistance provided by the PLHA as specified in the Agreement entitled "LOAN AND REGULATORY AGREEMENT BETWEEN THE CITY OF DALY CITY AND MP MIDWAY ASSOCIATES 2, L.P" dated _____, 2023. For the purposes of this Affordability Covenant, **fifty four** units will be considered PLHA -restricted units.

B. Affordability Requirements: All PLHA restricted units in permanent multifamily rental developments utilizing tax credits must remain affordable for a minimum of fifty-five (55) years from the date of the Certificate of Occupancy.

1. Income Limits: All PLHA restricted rental units must be restricted and affordable to households at or below 60 percent of Area Median Income ("AMI") for San Mateo County as published annually by the United States Department of Housing and Urban Development ("HUD"). Such units shall be considered PLHA restricted units. After Initial qualification, a household occupying an PLHA restricted unit may have its rent increased, consistent with project rules and requirements and not more than once in a 12-month period. Notwithstanding anything to the contrary set forth herein, in the event that the AMI decreases in any given calendar year, Borrower is permitted to apply the "hold harmless" policy ("Policy") implemented by California Tax Credit Allocation

Committee ("CTCAC") pursuant to the Housing and Economic Recovery Act of 2008 (H.R. 3221). The Policy states that, as of the date of placed-in-service, (or rent floor election date, available after CTCAC award/reservation), rent limits for a given calendar year cannot be lower than the highest amount of rent limits for each calendar year since placed-in-service. If Section 8 project-based rental assistance is obtained and later terminated, rents for any such PLHA rent-restricted units can be increased to the federally permitted maximums in accordance with the most recent applicable California Tax Credit Allocation Committee's ("CTCAC") regulations. If this operating subsidy is no longer available, the Owner will be allowed to transition these units as follows:

- a. First, to a homeless or frail elderly household that could afford to pay the maximum TCAC rent allowed; and if there is no household who can meet that criteria, the next eligible household on the Owner's waiting list that could afford to pay the maximum TCAC rent allowed can be allowed to transition to these units.

2. Affordability and Physical Distribution of the Rental Units:

City must approve the affordability mix of the Project. The PLHA-restricted units should be distributed by unit size, amenity mix, and income affordability throughout the entire Project, to the greatest extent possible.

- i. PLHA-restricted units in the Project will be floating units: Upon recertification of household income, if a household no longer qualifies to occupy their PLHA-restricted unit at the initially targeted affordability level for that unit, then the next available comparable PLHA-restricted unit shall become designated to target households at the same initially targeted affordability level as the recertified household's unit. The objective is to ensure the Project maintains the initial affordability-mix of the PLHA-restricted units over time.
- ii. If the income of a household occupying an PLHA-restricted unit increases to or beyond 60 percent of the AMI, the unit will no longer qualify as an PLHA-restricted unit for purposes of PLHA compliance. In that scenario, the next vacancy in a unit of similar size shall be filled with a household earning up to 60 percent AMI, qualifying that unit as an PLHA-restricted unit for purposes of PLHA compliance.
- iii. Rent Limit Compliance: City will periodically monitor the Project to ensure that the PLHA-restricted units are in compliance with these affordability requirements, and that procedures used to calculate the maximum tenant-paid rent for PLHA-restricted units are consistent with the Project's policies and requirements.

2. Rent and Occupancy Restrictions

- a. At least [REDACTED] must be occupied by a household whose income at move-in does not exceed the 60 percent Income Limit, as defined above.

3. Subordination.

This Affordability Covenant shall be subordinate to any mortgage or Deed of Trust, and the affordability period shall be terminated in the event of a foreclosure or transfer in lieu of foreclosure if the foreclosure or other transfer recognizes any contractual or legal rights of the City to take action that would avoid the termination of low-income affordability. However, this

affordability restriction shall be revived if, during the original term hereof, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the property.

The Owner grants to the City the right to take any and all legal action necessary to enforce the provisions of this Affordability Covenant, and the Owner shall be responsible for all reasonable legal expenses incurred by the City in the enforcement of this Affordability Covenant.

The City shall have the right to waive any and all breaches of the terms of this Affordability Covenant, but any such waiver shall not be deemed a waiver of all previous or subsequent breaches.

IN WITNESS WHEREOF, this Declaration of Affordability Covenant has been fully executed.

MP Midway Associates 2, L.P.,
a California limited partnership

By: MP Midway 2, LLC,
A California limited liability company,
its managing general partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Shwetha Subramanian, Assistant Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____,
Notary Public, _____ personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary seal above

Exhibit "A"

LEGAL DESCRIPTION

Real property in the City of Daly City, County of San Mateo, State of California, described as follows:

Being all of Lots 21 and 29, and portion of Lots 20, 22, 28, 30, 31 and 34 as said lots are shown on that certain Map, entitled "Map of Midway Village", filed for record on July 26, 1976 in Book 91 of Maps at Pages 44 through 48 inclusive, Records of San Mateo County and being also a portion of the Designated Remainder, as said Remainder is shown on that certain Parcel Map, entitled "Sub-05-1 9- 14055, Midway - Bayshore, Phase 1," filed for record on June 29, 2021 in Book 86 of Parcel Maps at Pages 3 through 8 inclusive, Records of said County, more particularly described as follows:

BEGINNING at the most easterly corner of said Designated Remainder, as shown on said Parcel Map (86 PM 3-8);

Thence leaving said corner and along the southeasterly line said Designated Remainder. South 20°35 '05" West, 180.48 feet;

Thence leaving said southeasterly line, the following courses and distances:

North 69°24 '55 " West, 134.32 feet;

South 20°35'05" West, 60.00 feet;

North 69°24'55" West, 319.20 feet to the southeasterly line of Schwerin Street, being 66.00 feet in width as shown on said Parcel Map;

Thence along said southeasterly line, North 20°35 '05" East, 188.56 feet:

Thence leaving said southeasterly line of Schwerin Street, South 69°24'55" East, 442.02 feet to the intersection with the southwesterly prolongation of the southeasterly line of said Designated Remainder;

Thence along said prolongation line, North 20°35'05" East, 51.92 feet to the northeasterly line of said Designated Remainder;

Thence along said northeasterly line, South 69°24'55" East, 11 .50 feet to the point of BEGINNING.

**SECURED PROMISSORY NOTE
(PLHA LOAN)**

\$486,230

\$

Daly City, California
_____, 20

FOR VALUE RECEIVED, _MP Midway Associates 2, L.P., a California limited partnership ("**Borrower**"), promises to pay to the City of Daly City ("**City**"), in lawful money of the United States of America, the principal sum of Four Hundred Eighty-Six Thousand Two Hundred Thirty Dollars (\$486,230) or so much thereof as may be advanced by City pursuant to the Regulatory and Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the outstanding principal balance of this Note at the rate of one percent (1 %) simple interest per annum. Interest shall accrue commencing upon the date of disbursement. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed. No payments shall be due on this Note prior to the date that City issues a final certificate of occupancy or equivalent for the Project (as defined in the Loan and Regulatory Agreement).

This Secured Promissory Note (PLHA Loan) (this "**Note**") has been executed and delivered pursuant to and in accordance with an Loan and Regulatory Agreement _____ (PLHALoan) executed by and between Borrower and City, dated as of _____ **even date** herewith (the "**Loan Agreement**"), in connection with Borrower's development of a **113**-unit family affordable housing project and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan and Regulatory Agreement.

This Note shall be unsecured; provided however, that upon Borrower's acquisition of a ground lease interest in the property ("Acquisition Closing"), this Note will be secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (PLHA Loan) ("**Deed of Trust**"), executed by Borrower for the benefit of City and encumbering the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, , and the other Loan Documents, including without limitation, a regulatory agreement to be executed between City and Borrower (the "Affordability Covenant") upon Acquisition Closing . The rent restrictions and other requirements set forth in the Affordability Covenant shall remain effective for the full term of the Affordability Covenant and shall survive the repayment of this Note.

1. PAYMENTS.

1.1 PAYMENT DATES; MATURITY DATE. Annual payments on this Note shall be payable on a residual receipts basis with a proportional share of fifty percent (50%) of all

Surplus Cash (defined below) payable to City toward principal and accrued interest. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and all other sums accrued hereunder shall be payable in full on the date (the “**Maturity Date**”) which is the earlier of (i) the fifty-fifth (55th) anniversary of the date upon which the City of Daly City issues a final certificate of occupancy or equivalent for the Project, or (ii) December 31, 2085; provided however, the Maturity Date shall not be earlier than the date of expiration or termination of the regulatory agreement recorded by the California Tax Credit Allocation Committee (TCAC) against the Property in connection with the allocation of federal Low-Income Housing Tax Credits for the Project.

1.2 **ANNUAL PAYMENTS FROM SURPLUS CASH.** By no later than April 30 of each year following the issuance of a final certificate of occupancy for the Project, Borrower shall pay to City a proportional share of fifty percent (50%) of all Surplus Cash generated by the Project during the previous calendar year to reduce the indebtedness owed under this Note. The respective shares of Surplus Cash that City, and other public agency Project lenders shall be entitled to receive shall be based on the proportional share of financing that each such lender has provided for acquisition of the Property and development of the Project. All of the City’s share shall be applied to payment of this Note.

No later than March 31st of each year following the issuance of a final certificate of occupancy for the Project, Borrower shall provide to City Borrower’s calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation, an independent audit prepared for the Project by a certified public accountant in accordance with generally accepted accounting principles. No later than November 1 of each year following issuance of the final certificate of occupancy for the Project, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash.

1.2.1 “**Surplus Cash**” shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Project. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Project, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

1.2.2 “**Gross Revenue**” shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received by Borrower from the operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Project shall be included within Annual Operating Expenses in the year of the expenditure);

condemnation awards for a taking of part or all of the Property or the Improvements for a temporary period; and the fair market value of any goods or services provided to Borrower in consideration for the leasing or other use of any part of the Project. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

1.2.3 **“Annual Operating Expenses”** shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust (**“Approved Senior Loans”**); property management fees in an annual amount not to exceed Sixty Dollars (\$60) per unit per month and a bookkeeping fee of Nine and 50/100 Dollars (\$9.50) per unit per month, each increasing by 3% annually and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount no more than \$400 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or as required by a physical needs assessment prepared by a third-party and prepared at Borrower’s expense; current and accrued partnership management fees payable to the general partner of Borrower and current and accrued asset management fees payable to the investor limited partner of Borrower and jointly available in the maximum aggregate sum of \$35,000 per year, increasing annually by three percent (3%) per year; payments of deferred developer fee; cash deposits into operating reserves in an amount reasonably approved by City or required by the holder of an Approved Senior Loan, but only if the accumulated operating reserve does not exceed three (3) months’ projected Project operating expenses; and other ordinary and reasonable operating expenses approved by City.

1.2.4 EXCLUSIONS FROM ANNUAL OPERATING EXPENSES. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees (except as permitted pursuant to Section 1.2.3); contributions to Project reserves (except as permitted pursuant to Section 1.2.3); except as provided in Section 1.2.3, debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; capital expenditures unless approved in advance in writing by City; distributions to partners; any amount paid to Borrower, any general partner of Borrower, or any entity controlled by the persons or entities in control of Borrower or any

general partner of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 1.2.3 above, even if paid to Borrower, an affiliate of Borrower, or a partner of Borrower: fees paid to a property management agent, resident services agent, or social services agent pursuant to a property management agreement or services agreement approved by City; partnership management fees, developer fees, asset management fees. Payments to Borrower, its partners or affiliates in excess of the applicable limitations set forth in Section 1.2.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

1.3 DUE ON SALE. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the transfer absent City consent, of all or any part of the Project or the Property or any interest therein other than a transfer permitted without City consent pursuant to the Loan Agreement. Without limiting the generality of the foregoing, this Note shall not be assumable without City's prior written consent, which consent may be granted or denied in City's sole discretion. This Note may be assumed upon a transfer of the Project to an affiliate or general partner of Borrower provided such transfer has been approved by City pursuant to the Loan Agreement, as applicable.

1.4 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Affordability Covenant shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

1.5 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to City at City Hall, 333 90th Street, Daly City, CA 94015-1895, or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(A) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Borrower thereof in writing.

(B) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(C) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof or substantially all of such entity's assets, (iii) orders the liquidation of Borrower or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within ninety (90) days after its issuance.

(D) The occurrence of a transfer in violation of the Loan Agreement Agreement.

(E) Upon Acquisition Closing, a default arises under any debt instrument secured by a mortgage or deed of trust on the Project or the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(F) Upon Acquisition Closing Borrower fails to maintain insurance on the Property and the Project as required pursuant to the Loan Documents and Borrower fails to cure such default within five (5) business days.

(G) Upon Acquisition Closing subject to Borrower's right to contest the following charges pursuant to the Loan Documents, if Borrower fails to pay taxes or assessments due on the Property or the Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon.

(H) If any representation or warranty contained in any Loan Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of the proceeds of the Loan proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the City.

(I) An Event of Default shall have been declared under the Loan Agreement or any other Loan Document and remains uncured beyond the expiration of the applicable cure period.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other Loan Documents, including without limitation the right, upon Acquisition Closing, to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the “**Default Rate**”); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

2.4 LIMITED PARTNERS RIGHT TO CURE. Borrower’s limited partners shall have the right to cure any default of Borrower hereunder upon the same terms and conditions afforded to Borrower. Any cure tendered by a limited partner of Borrower shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if tendered by Borrower.

3. MISCELLANEOUS.

3.1 WAIVERS; AMENDMENTS; BORROWER’S WAIVERS. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. There shall be no amendment to or modification of this Note except by written instrument executed by Borrower and City.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with the Loan Agreement.

3.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in

connection with this Note shall be filed in the Superior Court of San Mateo County, California, or in the Federal District Court for the Northern District of California.

3.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 NONRECOURSE. Neither Borrower nor its partners shall have personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Project, the Property and any other collateral held by City as security for this Note.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower has executed and delivered this Secured Promissory Note as of the date first written above.

BORROWER:By: MP Midway Associates 2, L.P.,
a California limited partnership

By: MP Midway 2, LLC,
a California limited liability company,
its general partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Shwetha Subramanian,
Assistant Secretary

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Daly City
City Hall
333 90th Street
Daly City, CA 94015-1895
Attention: City Manager

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of _____, 23__, by MP Midway Associates 2, L.P., a California limited partnership ("**Trustor**") to Old Republic Title Company as trustee ("**Trustee**"), for the benefit of the City of Daly City ("**Beneficiary**").

RECITALS

A. Trustor owns a leasehold interest to the land described in Exhibit A-1 attached hereto and incorporated herein by this reference (collectively, the "**Land**"). The Land is located in the City of Daly City, San Mateo County, California. Trustor intends to construct, own and operate an affordable multifamily rental residential development on the Land (the "**Project**").

B. Beneficiary and Trustor have entered into a PLHA Loan and Regulatory Agreement dated as of _____, 2023 (the "**Loan and Regulatory Agreement**") pursuant to which Beneficiary will provide a loan to Trustor in the amount of up to Four Hundred Eighty-Six Thousand Two Hundred Thirty Dollars (\$486,230) (the "**Loan**") for the purpose of financing predevelopment costs associated with the construction and development of the Land. Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof (the "**Note**") to evidence Trustor's obligation to repay the Loan. A Memorandum of the Loan Agreement will be recorded in the Official Records of San Mateo County ("**Official Records**") substantially concurrently herewith.

C. Trustor and Beneficiary; have also executed an Affordable Housing Declaration of Restrictive Covenants (the "**Covenant**"), at the time of Borrower's acquisition of a ground lease interest in the property ("Acquisition closing", and which will be recorded in the Official Records substantially concurrently herewith. Among other provisions, the Regulatory Agreement requires the residential units in the Project to be rented to Eligible Households at Affordable Rents (as defined in the Regulatory Agreement).

D. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (defined below) to secure repayment of the Note and

performance of Trustor's obligations under the Loan Documents (defined below), including without limitation, the **Loan Agreement and the Regulatory Agreement**.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land ("**Improvements**");

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, "**Appurtenances**");

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, "**Equipment**");

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, "**Leases**"), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, "**Rents**");

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding ("**Proceeds**");

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor ("**Gross Revenues**");

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, "**Plans**"); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, "**Financing**").

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the "**Property**."

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the "**Secured Obligations**"): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all present and future obligations of Trustor to Beneficiary under the Loan Documents (defined below); (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust or any other Loan Document as such may be modified, supplemented, amended, renewed or extended. The Note, the Loan and Regulatory Agreement, and this Deed of Trust are hereinafter collectively referred to as the "**Loan Documents**."

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not

cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. Trustor intends this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the

proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of San Mateo County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the Loan Documents, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) this Deed of Trust creates a valid lien on Trustor's entire interest in the Property, subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"); (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property or any part thereof on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor's chief executive office is specified in Section 10.2.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and except as disclosed to Beneficiary in writing, no condition on the Land violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (ii) except as disclosed to Beneficiary in writing, no contracts, licenses, leases or commitments regarding the maintenance or use of the Property or allowing any third party rights to use the Property are in force; (iii) except as disclosed to Beneficiary in

writing, there are no threatened or pending actions, suits, or administrative proceedings against or affecting the Property or any portion thereof or the interest of Trustor in the Property; (iv) there are no threatened or pending condemnation, eminent domain, or similar proceedings affecting the Property or any portion thereof; (v) Trustor has not received any notice from any insurer of defects of the Property which have not been corrected; (vi) there are no natural or artificial conditions upon the Land or any part thereof that could result in a material and adverse change in the condition of the Land; (vii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor's agents, is accurate and complete; and (viii) Trustor or Trustor's agents have disclosed to Beneficiary all material facts concerning the Property.

7.3 Authority. Trustor represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's current actual knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.4 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and all interest due on the indebtedness evidenced by the Note, shall promptly pay when due all sums payable by Trustor to Beneficiary pursuant to the Loan Agreement, including without limitation, the sums payable pursuant to Section 4.5.1 of the Loan Agreement, and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations or the Loan Documents in accordance with the respective terms thereof.

7.5 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the Loan Proceeds solely for purposes authorized by the Loan Documents. Trustor covenants that it shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and the Improvements solely for purposes authorized by the Loan Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Loan Documents.

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property, any part thereof, or interest therein is sold, assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the Loan Documents or if any other Transfer (as defined in the Loan Documents) occurs in violation of the Loan Documents. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.7 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Loan Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Loan Proceeds and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Beneficiary at any reasonable time following two business days prior notice.

7.8 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property; provided however, it is acknowledged that Trustor shall have no responsibility to pay the judgment lien recorded against the Property in connection with code violations that existed prior to Trustor's acquisition of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.9 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.10 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, at Trustor's expense, Trustor shall keep the Improvements and personal property now existing or hereafter located on the Property insured against loss by fire, vandalism and malicious mischief by a policy of standard fire and extended all-risk insurance. The policy shall be written on a full replacement value basis and shall name Beneficiary as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the Trustor or the Beneficiary shall have the right to notify the other party that it elects to have the replacement value redetermined by the insurance company. Subject to the rights of any senior lienholder, the proceeds collected under any insurance policy may be applied by Beneficiary to any indebtedness secured hereby and in

such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor; provided however, if Trustor is not in default under the Loan Documents, the proceeds shall be released to Trustor to repair or rebuild the Project. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding anything to the contrary set forth herein, provided that Trustor is not in default under any Loan Document, Trustor shall be permitted to use the proceeds of insurance to rebuild the Improvements.

7.10.1 Trustor shall at all times during the term hereof, maintain insurance coverage in the amounts and in accordance with the requirements specified in the Loan Documents, and shall otherwise comply with all requirements pertaining to insurance specified in [Article 11 of the Loan Agreement and Regulatory Agreement](#), or this Deed of Trust.

7.10.2 Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may require, including without limitation, copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required by this Section, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy.

7.10.3 If any insurance policy required hereunder is canceled or the coverage provided thereunder is reduced, Trustor shall, within five (5) business days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.10.4 The insurance policies required hereunder shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A VII status as rated in the most recent edition of Best's Key Rating Guide. Each policy of insurance shall contain an endorsement requiring the insurer to provide at least thirty (30) days written notice to Beneficiary prior to change in coverage, cancellation or expiration thereof.

7.11 Hazardous Materials.

Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of residential developments and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

To the fullest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, “**Indemnitees**”) harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually “**Claim**” and collectively “**Claims**”) arising in connection with the breach of Trustor’s covenants and obligations set forth in this Section 7.11 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property that occurs after the date the Trustor acquires the Land. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor’s own cost and expense, do all of the following:

- a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnites in any legal or administrative proceeding incident to any matters against which Indemnites are entitled to be indemnified under this Deed of Trust;
- b. reimburse Indemnites for any expenses paid or incurred in connection with any matters against which Indemnites are entitled to be indemnified under this Deed of Trust; and
- c. reimburse Indemnites for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnites of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor’s obligation to indemnify the Indemnites shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Beneficiary’s recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any Loan Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary’s failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.11 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any

guarantor or other party, or pursued any other rights available under the Loan Documents or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.11 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the “**Environmental Provisions**”), and that Trustor’s failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure (“**Section 736**”) for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary’s action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

“**Hazardous Materials**” means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

“**Environmental Law**” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment,

including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.12 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within three business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three (3) business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.18 and 8.2, whether or not any lawsuit is filed, or in

defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.13 Indemnification. Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.11) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Loan Document, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property; provided however, the indemnity provided hereunder shall not extend to Claims arising as a result of the sole active negligence or wilful misconduct of an Indemnitee. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.14. Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.14 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.15 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of

default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is not impaired, insurance and/or condemnation proceeds may be used to repair and/or restore the Project.

7.16 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.17 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid in full, and upon surrender of this Deed of Trust and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.18 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor if Trustor fails to do so in the time provided for cure, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.18 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

7.19 Limited Partners Right to Cure. Whenever Beneficiary delivers any notice of default hereunder, Beneficiary shall concurrently deliver a copy of such notice to the limited partner(s) in accordance with Section 10.2. Trustor's limited partner(s) shall have the same right as Trustor to cure or remedy any default hereunder within the cure period provided to Trustor extended by an additional sixty (60) days; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Trustor in order to cure such default, then the cure period shall be extended until the date that is

sixty (60) days following the removal and replacement of the general partner of Trustor, provided that the limited partner(s) have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement, and such cure shall be accepted or rejected on the same basis as if tendered by Trustor.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events.

a. Beneficiary's declaration of an Event of Default under any Loan Document, subject to the expiration of any applicable cure period set forth in such document;

b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust or any other Loan Document, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.6 hereof or if any other Transfer occurs in violation of the Loan Documents and Trustor fails to rescind such conveyance or otherwise cure such breach within the time period specified in paragraph j below;

d. Trustor fails to maintain the insurance coverage required hereunder or otherwise fails to comply with the requirements of Section 7.10 hereof and Trustor fails to cure such default within the applicable time specified in Section 7.10;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay when due any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon.

f. Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Loan Document proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Trustor or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor or any general partner thereof in an

involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof or substantially all of such entity's assets, (iii) orders the liquidation of Trustor or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project or any part thereof, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than sixty (60) days following receipt of notice of default.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any Loan Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been

removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the Loan Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Note immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Note.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the Loan Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (a) personal delivery, in which case notice shall be deemed delivered upon receipt; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; or (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier.

TRUSTOR: MP Midway Associates 2, L.P.
c/o MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attention: President

With a copy to: _____

BENEFICIARY: City of Daly City
City Hall
333 90th Street
Daly City, CA 94015-1895
Attention: City Manager

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.6.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of San Mateo County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "Property Jurisdiction"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Loan Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action by Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's Executive Director or by any person who shall have been designated by Beneficiary's Executive Director, without further approval by the governing board of Beneficiary.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

10.11 Counterparts. This Deed of Trust may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Partial Subordination to Extended Use Agreement. Trustor and the California Tax Credit Allocation Committee may enter into a Regulatory Agreement (the “**TCAC Regulatory Agreement**”), which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the “**Code**”). In the event of a foreclosure of Beneficiary’s interest under this Deed of Trust or delivery by the Trustor of a deed in lieu thereof (collectively, a “**Foreclosure**”), the following rule shall apply:

In the event of a Foreclosure, throughout the extended use period specified in the TCAC Regulatory Agreement, with respect to any unit that had been regulated by the TCAC Regulatory Agreement: none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated other than for good cause, nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR:

By: MP Midway Associates 2, L.P.,
a California limited partnership

By: MP Midway 2, LLC,
a California limited liability company,
its general partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Shwetha Subramanian,
Assistant Secretary

SIGNATURES MUST BE NOTARIZED.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, a Notary Public in and for said State, personally appeared, _____, proved to me the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Exhibit A-1

LAND

*Exempt from Recording fees pursuant to
Section 27383 of the Government Code*

**RECORDING REQUESTED BY
AND**

WHEN RECORDED, MAIL TO:

City of Daly City
Dept. Of Economic and Community
Development
333 90th Street
Daly City, CA 94015
Attn: City Manager

(This Space for Recorder's Use Only)

DECLARATION OF AFFORDABILITY COVENANT

MP Midway Associates 2, L.P., a California limited partnership (the "Owner") agrees that **fifty-four (54)** of the units located on the property described in the attached Exhibit "A" and more commonly known as Midway Village Phase 2 (the "Project"), shall be restricted for a period of **fifty-five (55) years** from the date of receipt of the Certificate of Occupancy in order to remain continuously affordable to lower income tenants (the "Affordability Covenant"). This Affordability Covenant shall be binding on the Owner and any and all successors in interest. Any capitalized terms used herein and not otherwise defined are defined as set forth in the Agreement.

1. The City of Daly City (the "City") – Permanent Local Housing Allocation Definitions

The following definitions shall be incorporated by reference in this Affordability Covenant:

A. Determination of the Permanent Local Housing Allocation (PLHA) Restricted Units:

An "the PLHA restricted unit" means a residential unit that is subject to rent and occupancy restrictions as a result of the financial assistance provided by the PLHA as specified in the Agreement entitled "LOAN AND REGULATORY AGREEMENT BETWEEN THE CITY OF DALY CITY AND MP MIDWAY ASSOCIATES 2, L.P." dated _____, 2023. For the purposes of this Affordability Covenant, **fifty four** units will be considered PLHA -restricted units.

B. Affordability Requirements: All PLHA restricted units in permanent multifamily rental developments utilizing tax credits must remain affordable for a minimum of fifty-five (55) years from the date of the Certificate of Occupancy.

1. Income Limits: All PLHA restricted rental units must be restricted and affordable to households at or below 60 percent of Area Median Income ("AMI") for San Mateo County as published annually by the United States Department of Housing and Urban Development ("HUD"). Such units shall be considered PLHA restricted units. After initial qualification, a household occupying an PLHA restricted unit may have its rent increased, consistent with project rules and requirements and not more than once in a 12-month period. Notwithstanding anything to the contrary set forth herein, in the event that the AMI decreases in any given calendar year, Borrower is permitted to apply the "hold harmless" policy ("Policy") implemented by California Tax Credit Allocation

Committee ("CTCAC") pursuant to the Housing and Economic Recovery Act of 2008 (H.R. 3221). The Policy states that, as of the date of placed-in-service, (or rent floor election date, available after CTCAC award/reservation), rent limits for a given calendar year cannot be lower than the highest amount of rent limits for each calendar year since placed-in-service. If Section 8 project-based rental assistance is obtained and later terminated, rents for any such PLHA rent-restricted units can be increased to the federally permitted maximums in accordance with the most recent applicable California Tax Credit Allocation Committee's ("CTCAC") regulations. If this operating subsidy is no longer available, the Owner will be allowed to transition these units as follows:

- a. First, to a homeless or frail elderly household that could afford to pay the maximum TCAC rent allowed; and if there is no household who can meet that criteria, the next eligible household on the Owner's waiting list that could afford to pay the maximum TCAC rent allowed can be allowed to transition to these units.

2. Affordability and Physical Distribution of the Rental Units:

City must approve the affordability mix of the Project. The PLHA-restricted units should be distributed by unit size, amenity mix, and income affordability throughout the entire Project, to the greatest extent possible.

- i. PLHA-restricted units in the Project will be floating units: Upon recertification of household income, if a household no longer qualifies to occupy their PLHA-restricted unit at the initially targeted affordability level for that unit, then the next available comparable PLHA-restricted unit shall become designated to target households at the same initially targeted affordability level as the recertified household's unit. The objective is to ensure the Project maintains the initial affordability-mix of the PLHA-restricted units over time.
- ii. If the income of a household occupying an PLHA-restricted unit increases to or beyond 60 percent of the AMI, the unit will no longer qualify as an PLHA-restricted unit for purposes of PLHA compliance. In that scenario, the next vacancy in a unit of similar size shall be filled with a household earning up to 60 percent AMI, qualifying that unit as an PLHA-restricted unit for purposes of PLHA compliance.
- iii. Rent Limit Compliance: City will periodically monitor the Project to ensure that the PLHA-restricted units are in compliance with these affordability requirements, and that procedures used to calculate the maximum tenant-paid rent for PLHA-restricted units are consistent with the Project's policies and requirements.

2. Rent and Occupancy Restrictions

- a. **At least 54 unit(s)** must be occupied by a household whose income at move-in does not exceed the 60 percent Income Limit, as defined above.

3. Subordination.

This Affordability Covenant shall be subordinate to any mortgage or Deed of Trust, and the affordability period shall be terminated in the event of a foreclosure or transfer in lieu of foreclosure if the foreclosure or other transfer recognizes any contractual or legal rights of the City to take action that would avoid the termination of low-income affordability. However, this

affordability restriction shall be revived if, during the original term hereof, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the property.

The Owner grants to the City the right to take any and all legal action necessary to enforce the provisions of this Affordability Covenant, and the Owner shall be responsible for all reasonable legal expenses incurred by the City in the enforcement of this Affordability Covenant.

The City shall have the right to waive any and all breaches of the terms of this Affordability Covenant, but any such waiver shall not be deemed a waiver of all previous or subsequent breaches.

IN WITNESS WHEREOF, this Declaration of Affordability Covenant has been fully executed.

MP Midway Associates 2, L.P.,
a California limited partnership

By: MP Midway 2, LLC,
A California limited liability company,
its managing general partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Shwetha Subramanian, Assistant Secretary

State of California)
) ss.
County of _____)

On _____ before me, _____,
Notary _____ Public, _____ personally _____ appeared
_____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary seal above

Exhibit "A"

LEGAL DESCRIPTION

Real property in the City of Daly City, County of San Mateo, State of California, described as follows:

Being all of Lots 21 and 29, and portion of Lots 20, 22, 28, 30, 31 and 34 as said lots are shown on that certain Map, entitled "Map of Midway Village", filed for record on July 26, 1976 in Book 91 of Maps at Pages 44 through 48 inclusive, Records of an Mateo County and being also a portion of the Designated Remainder, as said Remainder is shown on that certain Parcel Map, entitled "Sub-05-1 9- 14055, Midway - Bayshore, Phase 1," filed for record on June 29, 2021 in Book 86 of Parcel Maps at Pages 3 through 8 inclusive, Records of said County, more particularly described as follows:

BEGINNING at the most easterly corner of said Designated Remainder, as shown on said Parcel Map (86 PM 3-8);

Thence leaving said corner and along the southeasterly line said Designated Remainder. South 20°35 '05" West, 180.48 feet;

Thence leaving said southeasterly line, the following courses and distances:

North 69°24 '55 " West, 134.32 feet;

South 20°35'05" West, 60.00 feet;

North 69°24'55" West, 319.20 feet to the southeasterly line of Schwerin Street, being 66.00 feet in width as shown on said Parcel Map;

Thence along said southeasterly line, North 20°35 '05" East, 188.56 feet:

Thence leaving said southeasterly line of Schwerin Street, South 69°24'55" East, 442.02 feet to the intersection with the southwesterly prolongation of the southeasterly line of said Designated Remainder;

Thence along said prolongation line, North 20°35'05" East, 51.92 feet to the northeasterly line of said Designated Remainder;

Thence along said northeasterly line, South 69°24'55" East, 11 .50 feet to the point of BEGINNING.



City Council Meeting Agenda Report

Item # _____

Meeting Date: February 12, 2024

Subject: Adopt a Resolution Declaring Loneliness a Public Health Crisis

Recommended Action

Adopt a Resolution Declaring Loneliness a Public Health Crisis.

Background

United States Surgeon General, Dr. Vivek Murthy, has issued “Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General’s Advisory on the Healing Effects of Social Connection and Community,” which highlights the public health crisis of loneliness, isolation, and lack of connection, emphasizing the significant impact on mental, physical, and societal health.

San Mateo County has witnessed a rise in residents experiencing isolation, with 45% expressing difficulty in 2022. The percentage of residents who did not have someone to turn to in the past month if they needed or wanted help increased from 2004 (13.1%) to 2022 (16.1%). According to the County of San Mateo, men, adults with lower education or income levels, Asians, Pacific Islanders, Hispanics, LGBTQ+ respondents and residents of North County more often report they do not have a social connection network. National studies have further identified that race and ethnicity can contribute to the effects of loneliness, isolation, and lack of connection.

The City of Daly City is an immigrant community – more than half of our population is foreign born, highlighting the diverse composition of this community. Daly City is extremely diverse, so we must be responsive to all community member needs.

Additionally, national research underscores that older immigrants who relocate to another country are particularly susceptible to loneliness, attributed in part to shifts in language, cultural norms, social networks, and experiences of racism and/or discrimination. Daly City residents aged 65 or older make up almost 20% of our population, which is larger than the population cohort of children under 18. Throughout the pandemic, it became evident that the senior population in Daly City were experiencing isolation, and for some it was the first time in their lives they were experiencing loneliness.

Discussion

Loneliness has a profound impact on health and is comparable to smoking 15 cigarettes a day. It leads to poor health outcomes according to the U.S. Surgeon General Dr. Vivek Murthy, including an increased risk of heart disease, stroke, dementia, depression, and a higher likelihood of premature death.

The Surgeon General's Advisory on ‘Our Epidemic of Loneliness and Isolation’ provides a comprehensive framework for a National Strategy to Advance Social Connection, outlining six foundational pillars to address this critical issue:

City Council Agenda Report

Subject: Adopt a Resolution Declaring Loneliness a Public Health Crisis

Meeting Date: February 12, 2024

Page 2 of 2

1. Strengthening Social Infrastructure: Designing environments that promote connection, establishing community connection programs, and investing in institutions that bring people of all ages together;
2. Enacting Pro-Connection Public Policies: Supporting policies at the national, state, local, and tribal levels that enhance community connection, such as accessible public transportation and paid family leave;
3. Mobilizing the Health Sector: Assessing patients for the risk of loneliness and intervening, recognizing the health implications of social isolation;
4. Reforming Digital Environments: Critically evaluating technology use to ensure that digital interactions do not detract from meaningful and healing connections;
5. Deepening Our Knowledge: Establishing a robust research agenda to better understand the causes and consequences of social disconnection and the effectiveness of efforts to boost connection; and
6. Cultivating a Culture of Connection: Fostering a culture that promotes positive everyday interactions and norms to enhance relationships.

Social connection is recognized as a key factor in building individual resilience and improving community well-being, with potential benefits for population health, community safety, prosperity, and civic engagement.

Fiscal Impact

None.

Summary/Conclusion

Through Mayor Juslyn C. Manalo's leadership recognizing that loneliness, isolation, and lack of connection exists in Daly City, the City Council may consider becoming one of the first cities in the nation to adopt a Resolution Declaring Loneliness a Public Health Crisis and begin taking steps as a unified community to build stronger social connections.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,



Leilani Ramos
Assistant to the City Manager

Attachment: "Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General's Advisory on the Healing Effects of Social Connection and Community"

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY
DECLARING LONELINESS A PUBLIC HEALTH CRISIS IN THE CITY OF DALY CITY,
COUNTY OF SAN MATEO

WHEREAS, United States Surgeon General, Dr. Vivek Murthy, has issued “Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General’s Advisory on the Healing Effects of Social Connection and Community,” which highlights the public health crisis of loneliness, isolation, and lack of connection, emphasizing the significant impact on mental, physical, and societal health; and

WHEREAS, the physical and mental health consequences of poor or insufficient connection are profound, including an increased risk of heart disease, stroke, dementia, depression, and a higher likelihood of premature death; and

WHEREAS, in San Mateo County in 2022, 45% of residents expressed they were experiencing difficulty with isolation and loneliness. The percentage of residents who didn’t have someone to turn to in the past month if they needed or wanted help increased from 2004 (13.1%) to 2022 (16.1%). Men, adults with lower education or income levels, Asians, Pacific Islanders, Hispanics, LGBTQ+ respondents and residents of North County more often report they do not have a social connection network; and

WHEREAS, national studies have further identified that race and ethnicity can contribute to the effects of loneliness, isolation, and lack of connection. The City of Daly City is an immigrant community – more than half of our population is foreign born, highlighting the diverse composition of this community; and

WHEREAS, national research underscores that older immigrants who relocate to another country are particularly susceptible to loneliness, attributed in part to shifts in language, cultural norms, social networks, and experiences of racism and/or discrimination; and

WHEREAS, loneliness and isolation disproportionately impact older adults, contributing to social isolation, loneliness, and poor health outcomes. Daly City residents aged 65 or older make up almost 20% of our population, which is larger than the population cohort of children under 18. Throughout the pandemic, it became evident that the older adult and senior population in Daly City were experiencing isolation, and for some it was the first time in their lives they were experiencing loneliness; and

WHEREAS, the Surgeon General's Advisory on Our Epidemic of Loneliness and Isolation provides a comprehensive framework for a National Strategy to Advance Social Connection, outlining six foundational pillars to address this critical issue; and

WHEREAS, social connection is recognized as a key factor in building individual resilience and improving community well-being, with potential benefits for population health, community safety, prosperity, and civic engagement; and

WHEREAS, Daly City will become one of the first cities in the nation to adopt a Resolution Declaring Loneliness a Public Health Crisis and begin taking steps as a unified community to build stronger social connections.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Daly City that it does hereby acknowledge the importance of addressing loneliness and isolation as a critical public health concern in the City of Daly City, County of San Mateo, recognizing that social connection is essential for the health and well-being of our residents.

I hereby certify the foregoing to be a true copy of a Resolution adopted by the City Council of Daly City, California, at a regular meeting thereof held on the _____ day of _____, 2024, by the following vote of the members thereof:

AYES, and in favor thereof, Councilmembers: _____

NOES, Councilmembers: _____

ABSENT, Councilmembers: _____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MAYOR OF THE CITY OF DALY CITY

DRAFT



CITY OF DALY CITY MEMORANDUM

From: Rose Zimmerman, City Attorney 
To: Mayor and City Council
Thomas J. Piccolotti, City Manager
Date: February 9, 2024

Subject: City Council Vacancy and Discussion Next Steps

BACKGROUND

Councilmember Raymond Buenaventura informed the City that effective February 2, 2024, he would resign as Councilmember for the City of Daly City. He confirmed that decision in writing to the City Clerk on February 2, 2024.

As a result of his resignation, there is now a vacancy in the Council seat. Government Code §36512 sets out the procedure to fill a City Council vacancy. Section 36512 allows a city to enact an ordinance that allows a person appointed to fill a vacancy on the city council to hold office until the date of a special election, which shall immediately be called to serve the remainder of the term.

Daly City Municipal Code Section 2.04.060 requires that a special election be called upon a vacancy on the City Council. The Code states: “Special election to fill vacancy - *A person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. Such a special election may be held on the date of the next regularly scheduled election to be held throughout the City in not less than one hundred fourteen days from the call of the special election.*”

Council may appoint someone to fill a Council vacancy, but only until the special election date.

DISCUSSION

Special Election

The Daly City Municipal Code requires that a special election be called upon a vacancy on the Council. Daly City enacted DC Municipal Code section 2.04.060, which provides that a person appointed to fill a vacancy on the city council holds office until the date of a special election. The special election will be held on the date of the next regularly scheduled municipal election to be held throughout the city, not less than 114 days from the call of the special election. The next regularly scheduled general election is November 5, 2024.

Appointment By City Council to Fill Vacancy

The Council may appoint someone to fill the Council vacancy, but only until the special election date. The Council appointment may fill the vacant seat for the remaining eight months of the term until the Special Election. The Council may consider a qualified resident of the City to serve the term until the Special Election.

There is no specified process to solicit individuals for appointment. The City Council may make a direct appointment or establish a formal procedure to interview candidates and decide on an appointment for the remaining term. The only criteria are that the person appointed must be a member of the public who legally resides within the City limits and is registered to vote (Government Code section 36502).

The City Council can nominate individuals or go through an application and interview process. If the City Council opts to fill the vacancy by appointment and hold interviews, the Brown Act requires the entire City Council to conduct the interviews in open session.

If the Council wishes to proceed with an application and interview process, staff requests the Council authorize staff to a procedure to initiate applications from interested persons, set a due date for all applications, and schedule a follow-up meeting for consideration of the applications by the City Council. Staff can prepare a sample application and timeline for review upon direction from the Council.

Take No Action Option for Appointment

Although not reflected in the statute, the last option is to take no action to fill the vacancy and to wait for the Special Election.

CONCLUSION

Council Determination:

1. Call Special Election to be consolidated with General Election at next regularly scheduled City Council meeting; and
2. Provide direction to City staff to initiate an appointment process for applications and interviews or other steps as determined by the City Council for consideration at a future meeting or
3. Take no action on appointment or
4. Provide alternative direction to staff.

Staff is available for any questions desired by the Mayor or City Council.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY
AMENDING TITLE 6 OF THE DALY CITY RE: ANIMAL CONTROL

The City Council of the City of Daly City, DOES ORDAIN as follows:

SECTION 1. Title 6 of the Daly City Municipal Code is amended to be entitled and numbered to read as follows:

Title 6

ANIMAL CONTROL

Chapter 6.04	Animal Control
Chapter 6.08	Prohibitions and Nuisances
Chapter 6.10	Violation and Penalty
Chapter 6.12	Horse Stables

SECTION 2. Chapter 6.04 of the Daly City Municipal Code is hereby repealed and replaced and numbered to read as follows:

CHAPTER 6.04 ANIMAL CONTROL

6.04.010 – Definitions

The following words and phrases, when used in this Chapter shall have the meaning set forth below:

"Animal Control Officer" – any Person designated as the Animal Control Program Manager for the County, as well as the head of the County's animal control contractor and their duly authorized officers or deputies. In the event the County has no animal control contractor to provide animal control officers, or in cases of emergency in which additional animal control officers are needed, "animal control officer(s)" may include Persons so designated by the Animal Control Manager.

"Animal Control Program" – that program established by the County and participating cities, and the Program's animal control contractor(s), if any, which contractor is specifically charged with regulating and enforcing laws dealing with animal control within the participating jurisdictions. Animal Control Program includes the Licensing Program.

"Animal Control Program Manager" - that Person employed by the County to oversee the Animal Control Program or designee.

"Animal Control Shelter" - A San Mateo County facility operated by the County, or by another public entity, an accredited, tax-exempt humane non-profit organization contracted with the County, or a for-profit business contracted with the County for the purpose of impounding, sheltering, adopting, or euthanizing seized, stray, distressed, homeless, abandoned, or unwanted animals.

“Caretaker” - any Person 18 years of age, or older, who has assumed responsibility for the care, custody, or control of an animal(s).

"Dangerous Animal" - any animal, except a trained animal assisting a peace officer engaged in law enforcement duties, that constitutes a danger to Persons or animals, and/or demonstrates any of the following behavior(s):

- (a) behavior that results in bodily harm that is less serious than a “Severe Injury”, or constitutes a substantial threat of bodily harm to a Person; or
- (b) an attack on another animal which results in an injury that is sufficient to require veterinary care even if not received.

An animal which has been declared by an out of this County jurisdiction as "potentially dangerous," "dangerous," "vicious," or any other similar designation, may be deemed a Dangerous or Vicious animal for the purposes of this Chapter, as determined by an Animal Control Officer.

“Health Officer” - that Person so designated by the County of San Mateo.

“Humane Officer” - any Person who is qualified and appointed pursuant to California Corporations Code Section 14502, and who is an employee of the County and designated as such by the County or an employee of a society for prevention of cruelty to animals or humane society that has contracted with the County of San Mateo to provide animal control services.

"Licensing Program" - that program within San Mateo County Health Department, including but not limited to, any County contractor specifically charged with regulating and selling animal licenses in the County of San Mateo.

“Owner” - any Person 18 years of age or older who:

- (a) holds the license to the animal; or
- (b) if the animal is not licensed, is legally entitled to possession of the animal; or
- (c) has exercised primary responsibility for the care of the animal for thirty (30) or more consecutive calendar days.

“Person” – means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative thereof.

“Severe injury” - Any physical injury to a human caused by an animal attack that involves tooth derived muscle tears, disfiguring wounds or laceration(s), multiple bites requiring sutures, broken bones and/or requires corrective surgery.

“Service Animal” - any animal defined as such by federal or state law.

"Vicious Animal" - any animal, except a trained animal assisting a peace officer engaged in law enforcement duties, which meets any or all of the following criteria:

- (a) Any animal that, at the time of the attack, is already designated as a Dangerous Animal and/or is the subject of a Dangerous Animal permit, and which is found to have engaged in any of the following:
 - (1) behavior that results in bodily harm, or constitutes a substantial threat of bodily harm, to a Person; or
 - (2) an attack on another animal which results in an injury that is sufficient to require veterinary care, whether or not received.
- (b) Any animal that inflicts Severe Injury to or kills a Person.
- (c) Any animal which cannot be safely maintained with a Dangerous Animal permit.
- (d) Any animal designated by another governmental jurisdiction as, "dangerous", "vicious", or any other similar designation, if that prior designation is based on behavior which would meet the definition of Vicious Animal under this Chapter, as determined by an Animal Control Officer.

6.04.020 - Animal Control Program.

- (a) The Animal Control Program is responsible for the enforcement of this Chapter.

The duties of the Animal Control Program shall include, but not be limited to, the following:

- (1) Provide animal control, sheltering services, and a rabies control program to carry out and enforce all provisions of this Chapter and California Health & Safety Code section 121690, and keep such records as may be required by law or contract.
- (2) Enforce the provisions of this Chapter and all applicable state and local laws relating to the care, treatment, and impounding of animals, and specifically to issue citations and to make arrests for violations of the provisions of this Chapter and related state laws, to the extent authorized by law.
- (3) Impound animals found to be in violation of this Chapter in the interest of protecting public health and safety.
- (4) Investigate animals pursuant to this Chapter or applicable state law and, if deemed appropriate, designate any such animals as Dangerous or Vicious pursuant to this Chapter.
- (5) Impound animals which are in imminent or ongoing danger, or which are in need of safekeeping in order to protect the health and safety of the animal.
- (6) Impound animals that are causing a threat to public safety.

- (7) Where authorized under the law, to enter upon any premises upon which any animal is kept in order to seize or impound of any animal if reasonable cause exists to believe that such animal is being kept or has behaved in violation of the provisions of this Chapter.
 - (8) To remove and dispose of the carcass of any animal(s) found on any public right of way, except freeways or other areas maintained by Caltrans.
 - (9) Quarantine animals under the direction of the County Health Officer to ensure public health and safety.
 - (10) Euthanize and/or dispose of animal(s) humanely and in accordance with the law.
 - (11) Place for adoption, when appropriate, properly impounded animals if such animals are not redeemed after due notice to known Owners in accordance with the law.
 - (12) Provide and hold vaccination clinics in strategic locations throughout the County pursuant to Health and Safety Code 121690.
 - (13) Provide or make available at low cost, spay/neuter surgeries to dogs, cats, and rabbits.
 - (14) Provide for issuance of an animal license for a period not to exceed the term of the anti-rabies vaccination, as provided by state law.
 - (15) To collect any fees or charges provided for in this Chapter for the licensing, impounding and/or keeping of any animal, or for the enforcement of this Chapter.
- (b) Animal Control Officers qualified under Penal Code section 830.9, who are either employees of the County designated as such by the County, or employee(s) of and designated as such by a society for prevention of cruelty to animals or humane society which has contracted with the County to provide animal control services, shall have the authority to issue citations and/or notices to appear in court, and obtain and execute search warrants to the maximum extent allowed by law, for violations of state and local animal control laws. Animal Control Officers shall have the authority provided by state law including, but not limited to, that described by Penal Code section 830.9. Animal Control Officers must complete Penal Code section 832 training.
- (c) Those employees of a society for prevention of cruelty to animals or humane society under contract with the County to provide animal control services, who have been appointed and qualify as humane officers under California Corporations Code section 14502, or its successor statute, shall have the authority to issue citations and/or notices to appear in court, and obtain and execute search warrants, to the maximum extent allowed by law, for violations of state and local animal control laws.

- (d) The County may contract for animal control services to be performed countywide, including within cities, provided agreement is made with the participating jurisdictions.

6.04.030 - Rabies Vaccinations.

- (a) Every dog or cat Owner shall ensure their animal is vaccinated for rabies by a licensed veterinarian in the manner prescribed or approved by state law and the State of California Department of Public Health, after the dog or cat attains the age of three (3) months of age and/or within ten (10) calendar days of acquiring an unvaccinated animal. This vaccination shall be obtained prior to issuing a license for the dog or cat. In addition, proof of vaccination shall be provided by the Owner or veterinarian to the Licensing Program or the County's animal control contractor.
- (b) Every veterinarian who vaccinates or causes or directs to be vaccinated in the County any dog, or cat with rabies vaccine shall certify that such animal has been vaccinated. Every veterinarian shall submit to the licensing authority a copy of the County-approved rabies vaccination form, within ten (10) calendar days of the beginning of each month, for any dog or cat which they vaccinate or direct to be vaccinated with anti-rabies during the previous month. An Animal Control Officer or animal licensing staff shall have the right to inspect records of rabies vaccinations during normal business hours.
- (c) Upon receipt of a written request from a licensed veterinarian to exempt a microchipped pet from receiving a one or three-year vaccination, for medical reasons, the County Health Officer and/or designee shall review the basis for the request for exemption and approve or/deny said request.

6.04.040 - Dog and Cat Licenses.

- (a) Licensing requirements for dogs and cats shall be as follows:
 - (1) An annual license shall be obtained, and an annual license fee shall be paid by the Owner for every dog or cat over the age of three (3) months owned or kept in unincorporated San Mateo County, and all cities within the County which adopt this Chapter. Said annual license fee shall be first due when the animal reaches three (3) months of age or within sixty (60) calendar days after the dog or cat is acquired, and due on the expiration date of the rabies vaccination and each year thereafter.
 - (2) New residents shall have sixty (60) calendar days in which to acquire such license.
 - (3) Persons renewing their license shall have thirty (30) calendar days following their due date before being found delinquent and assessed a late penalty.
 - (4) The fee for such license shall be as set forth in section 6.04.350 of this Chapter. The fee paid for the licensing of altered dogs and cats shall be less than said license fee for unaltered cats or dogs upon presentation of the proper

certification. The license fee paid by Persons over the age of 60 shall be at a discount.

- (5) An Owner may obtain a three-year license for a cat or dog by submitting to the Licensing Program adequate proof of a three-year rabies vaccination of the animal to be licensed and payment of the applicable fees, as set forth in section 6.04.350 of this code.
 - (6) Any Person who fails to pay such license fee after said fee is due or said dog or cat is required to be licensed, in addition to paying any past due license fee(s), may also be required to pay a late fee in accordance with Section 6.04.350 of this Chapter or may receive an administrative citation.
 - (7) A license shall be obtained, but no license fee shall be payable, by the Owner of any dog being raised, trained or used as a Service Animal, or for dogs that have served as a member of the armed forces of the United States of America, or any dog used by a local law enforcement agency for the purposes of law enforcement.
 - (8) Animals with microchip implants or other permanent identification acceptable to the Animal Control Program are not exempt from the mandatory licensing requirements.
- (b) The licensing provisions in this Chapter are not applicable to the following:
- (1) Dogs or cats used for diagnostic purposes or research, the use having been approved by the California State Department of Health Services pursuant to section 1666 of the Health and Safety Code.
 - (2) Dogs or cats used for teaching purposes in recognized educational institutions.
 - (3) Dogs or cats owned by veterinarians licensed by the State and kept on the premises used by said veterinarians in their practice.
- (c) Tags for dogs and cats shall be issued as follows:
- (1) The Licensing Program shall procure and, when licensing fee is paid, issue a lifetime tag which shall bear the number of the license. A record shall be kept with the name of the Owner together with a description of the dog or cat for which the license is issued and the number of the license, and a tag shall be provided to such Person upon payment for such license as provided by this Chapter.
 - (2) Whenever a tag has been lost or stolen, the Owner of the animal may request a duplicate tag upon payment of the required fee.
 - (3) The Owner of a licensed dog or cat shall affix such tag to a suitable collar, which collar shall remain on the dog or cat at all times.

- (4) When an animal has been designated as a Service Animal, the Owner may obtain a lifetime service tag and shall be required to follow the requirements in Section 6.04.030 (a). Said tag will replace a regular dog license.
- (5) The Owner or operator of any kennel, animal breeding facility, pet shop, or any place or establishment where animals are sold, adopted, or given away shall keep a permanent record of the name, address, and phone number of the purchaser of any dog or cat, along with the breed, color, sex, and age of each animal sold, adopted, or given away and shall forward such information to Animal Control services within thirty (30) calendar days thereafter. An Animal Control Officer, County representative, or employee of the County's animal control contractor shall have the right to inspect such records during normal business hours, with forty-eight (48) hours prior notice to the Owner or operator.

6.04.050 - Public Protection from Dogs.

- (a) No Owner or possessor of a dog shall cause or allow such dog to bite, or physically threaten or harass any person unless necessary to protect the physical safety of a Person.
- (b) Every Owner or possessor of a dog shall prevent such dog from causing injury to another animal while such animal is lawfully upon public or private property. The failure of the Owner of a victim animal to have the animal on a leash shall not, in itself, constitute a mitigating factor in any attack.
- (c) No Owner or possessor of a dog shall command or provoke such dog to attack, sic or threaten a Person unless such action is necessary to protect the physical safety of a Person.
- (d) No Owner or possessor of a dog that resides in another county and is found to have violated this section shall thereafter allow such dog to be brought into San Mateo County unless the dog is fully enclosed in a vehicle and passing through to another location without stopping at any public or private premises within the County.

6.04.060 - Prohibited Conduct.

No Owner or other Person having care, custody or control of any animal shall cause or permit it to do any of following:

- (a) To be upon any public street, sidewalk, park, school ground, any public property, or upon any unenclosed premises in this jurisdiction unless:
 - (1) the animal is properly licensed, if such licensing is necessary hereunder; and
 - (2) the animal is controlled by a chain, lead rope, or leash, which is connected to the animal's collar, saddle, harness, or halter. This latter requirement is not applicable to cats, or to service animals under the complete control of the Owner or Caretaker.

An electric or invisible fence does not constitute an enclosure for the purposes of this requirement.

- (b) To trespass upon any private property without the consent of the owner thereof, and to knowingly permit the animal to remain upon the property, or to habitually continue to trespass thereon.
- (c) To suffer or permit such animal to habitually bark or meow or otherwise act to disturb the peace of any citizen or to be a public nuisance.
- (d) To be without proper and adequate food, water, shelter, care, and attention.
- (e) No Person shall possess within San Mateo County any animal designated by another jurisdiction as “potentially dangerous”, “dangerous”, or “vicious,” or other designation based on the animal’s potential danger to humans and/or animals, without previously notifying Animal Control and receiving express written permission from the Animal Control Manager for the animal’s presence or residence in San Mateo County. A failure to receive prior permission is in itself a sufficient basis for an Animal Control Officer or peace officer to seize and impound such animal.
- (f) Subsection (a)(2) of this section shall not be applicable to cats.

6.04.070 - Protection of Animals in Motor Vehicles.

- (a) No Person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of said animal due to heat, cold, lack of adequate ventilation, lack of water, or other circumstances that could reasonably be expected to cause suffering, disability, or death of said animal.
- (b) An Animal Control Officer, Humane Officer or peace officer may remove an animal from a motor vehicle if the animal’s safety reasonably appears to be in immediate danger from heat, cold, lack of adequate ventilation, lack of water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. An Animal Control Officer, Humane Officer or peace officer is authorized to take all steps that are necessary for the removal of such animal from the motor vehicle, including, but not limited to, breaking into the motor vehicle, after a reasonable effort has been made to locate the Owner or other Person responsible.
- (c) If an animal is removed from a motor vehicle as set forth herein, the removing officer shall, if deemed necessary by the officer, take it to an animal shelter, veterinary hospital, or other place of safekeeping.
- (d) An Animal Control Officer or peace officer who removes an animal from a motor vehicle shall, in a conspicuous location on or within the motor vehicle, leave written notice bearing their name and office, and the address of the location where the animal can be claimed. The animal may be released to the Owner only after payment of all fees that have accrued for the maintenance, care, medical treatment, or impoundment of the animal.

- (e) Nothing in this section shall preclude prosecution under both this section and California Penal Code Section 597 or any other provision of state or local law.

6.04.080 - Release from Confinement.

No Person other than the Owner, or person authorized by the Owner of the animal shall release any animal from any confinement, vehicle, or restraint unless such release is necessary for the immediate health and safety of the animal. This section shall not apply to Animal Control Officers, Humane Officers, and/or peace officers.

6.04.090 - Declaration of Dangerous Animal.

- (a) No Person shall knowingly keep, have, maintain, sell, trade, or let for hire an animal designated as Dangerous under this Chapter without obtaining a Dangerous Animal permit from the Animal Control Officer. The animal Owner shall comply with all conditions of the Dangerous Animal permit including, but not limited to, all requirements of section 6.04.100 of this Chapter. Any animal which is determined to be Dangerous under this Chapter and for which a permit has not been obtained shall be surrendered to an Animal Control Officer, peace officer, or a County animal control contractor agency for appropriate disposition, which may include humane euthanasia.
- (b) In determining whether or not an animal shall be designated as Dangerous, the Animal Control Officer, peace officer, or hearing officer may consider any relevant facts and circumstances, including but not limited to:
 - (1) the alleged attacking animal's prior history.
 - (2) the alleged attacking animal's Owner(s) ability to comply with this Chapter, and/or compliance with any prior Dangerous Animal permits held by the alleged attacking animal's Owner(s).
 - (3) whether any of the animals involved were previously deemed by a governmental jurisdiction as "potentially dangerous", "dangerous", "vicious" or any other similar designation.
- (c) In determining whether or not an animal shall be designated as Dangerous, the Animal Control Officer, peace officer, or hearing officer, may consider the following mitigating factors:
 - (1) Whether at the time of the injury, attack or molestation, the Person or animal suffering the injury, attack or molestation:
 - (i) provoked, tormented, teased, abused or assaulted the animal, thereby causing or contributing to the alleged behavior;
 - (ii) committed a willful trespass or other tort upon the private property of the Owner or Caretaker of the animal in the presence of the animal;

- (iii) threatened or committed an unjustified attack or assault against the Owner, Caretaker or other Person in control of the animal in the presence of the animal
- (2) Any other mitigating factor relevant to whether the animal poses a threat to public health or safety. The failure of the Owner or Person in control of a victim animal to have the victim animal on a leash shall not, in itself, constitute a mitigating factor in any attack.
- (d) The unwillingness of a victim or a particular witness to testify at a hearing shall not prevent designation of an animal as a Dangerous Animal, as long as sufficient evidence exists to support the designation.
- (e) In the event that an Animal Control Officer or peace officer determines it necessary to protect the health or safety of the public, or of any animal, they may immediately impound any animal according to the procedures set forth in this Chapter.
- (f) If an Animal Control Officer or peace officer has investigated and determined that an animal is Dangerous, the Animal Control Officer or peace officer shall deliver written notice of such determination to the Owner of the animal pursuant to section 6.04.260.
- (g) Should the Owner of the animal wish to contest the Dangerous Animal designation, the Owner may request a hearing, which hearing shall be conducted according to the procedures set forth in section 6.04.150 of this Chapter. The Owner shall submit a written request for a Dangerous Animal hearing to the Animal Control Officer within seven (7) calendar days of the written notification by the Animal Control Officer and/or peace officer that the animal has been declared dangerous.
 - (1) Should the animal Owner not submit a request for an administrative hearing within the required timeframe, the administrative hearing process shall be deemed waived, the Dangerous Animal designation will be final, and the animal Owner shall obtain a Dangerous Animal permit within seven (7) calendar days of the written notification that the animal has been declared Dangerous.
 - (2) If the animal Owner requested a hearing and the hearing officer confirms the determination that the animal is Dangerous, the Owner must obtain the Dangerous Animal permit and meet the conditions required by such permit, within seven (7) calendar days of notice of such decision, unless the time is extended by an Animal Control Officer.
 - (3) If an animal is designated as Dangerous, but the Owner fails to obtain a Dangerous Animal permit within the required timeframe, the animal will be deemed abandoned, and will be subject to disposition as deemed appropriate, including potential euthanasia by the County's animal control contractor, at the discretion of the Animal Control Officer, peace officer or City or County representative. If not already impounded, the animal will be promptly impounded. The Owner of the animal shall be responsible for all costs of impoundment of the animal incurred prior to such abandonment.

- (h) If after investigation by an Animal Control Officer or peace officer, that officer determines that the animal is not Dangerous, the victim or an Owner of a victim animal may appeal that determination, within seven (7) calendar days of notice of the decision given pursuant to section 6.04.260, by submitting to the Animal Control Officer or peace officer a written request for a hearing and paying the required fee. The Animal Control Officer or peace officer shall prepare a written report documenting its reasons for determining the animal not Dangerous and shall include evidence it has considered for and against the designation in its report. The hearing shall be conducted according to the procedures set forth in section 6.04.150 of this Chapter.
- (i) No animal designated by the County as a Dangerous Animal may be transferred to a new place of residence or to a new Owner or Caretaker without prior written approval of the Animal Control Program Manager. Prior to the relocation, a written request for the relocation must be delivered to the Animal Control Program Manager and the County's animal control contractor, if any, at least 30 calendar days prior to the relocation.
- (j) If an Animal Control Officer declares an animal as Dangerous which has already been declared Potentially Dangerous or Dangerous by another jurisdiction located outside of the County of San Mateo, the Owner of such animal must obtain and comply with a Dangerous Animal permit at least seven (7) calendar days prior to moving the animal into the County. The animal shall not reside in the County of San Mateo until the Dangerous Animal permit has been issued by the Animal Control Program and the Owner meets the conditions of said permit.
- (k) A permit issued under this section is subject to renewal annually. An annual inspection of the location where the animal resides will be performed by an Animal Control Officer. Inspections may occur at any reasonable hour and will occur at least annually. The fee for such permit and inspection shall be as set forth in section 6.04.350 of this Chapter. Fees shall not be refundable. If the registered Owner fails to pay the permit fee and/or comply with the requirements of the permit within ten (10) calendar days of the annual inspection date, the permit may be revoked and the animal may be impounded for appropriate disposition, as determined by an Animal Control Officer, peace officer, County contracted agency or City designee, including humane euthanasia.
- (l) A Dangerous Animal designation is a designation that remains with that animal for its lifetime, unless terminated as provided by this subsection. A Dangerous Animal designation may be terminated if all of the following criteria have been met, as determined by an Animal Control Officer or peace officer and the Animal Control Program Manager and/or City designee:
 - (1) The Owner has complied with all Dangerous Animal Permit requirements for a period of three (3) years and the animal has not been found to have committed any violations of the requirements of the permit, or of this Chapter, or any other applicable animal control laws, for the duration of that period.

- (2) The animal has remained current on all rabies or similar required vaccinations and has remained current on its licensing and paid all fees for the duration of the three (3) year period.

If an animal Owner disputes a finding that the Dangerous Animal designation will not be terminated, the animal Owner may request an administrative hearing to be held according to the procedures set forth in section 6.04.150 of this Chapter.

6.04.100 - Dangerous Animal Permit Requirements.

- (a) Any Owner of a Dangerous Animal shall ensure compliance with the following rules and regulations which shall be mandatory requirements for any Dangerous Animal permit:
 - (1) When the animal is off the property of its Owner, ensure that the animal is not kept upon any unenclosed premise unless said animal is leashed and muzzled with a cage or basket muzzle, or any other muzzle approved by the Animal Control Officer. The leash shall not exceed four (4) feet in length and having a minimum tensile strength of 300 pounds and shall be under the direct control and supervision of the Owner or a Person of such age, size, and strength as can easily control such animal. Extraordinary care shall be taken by the Owner and/or Caretaker to ensure that such restraint is sufficient to control the animal in a manner which it will not endanger other Persons or animals.
 - (2) Ensure said animal is never kept on any unenclosed premises even if tethered, tied or staked.
 - (3) Ensure said animal is kept in a fenced yard, kennel, dog run or other enclosure, sufficient to prevent the escape of the animal or entry of young children, as approved by the Animal Control Officer or peace officer. An electric or invisible fence is not an acceptable means of enclosure for the purpose of this requirement.
 - (4) Maintain the animal so that it is not a threat to any mail carrier, sanitation worker, meter Person, or other Person who has the lawful right to enter the property.
 - (5) Ensure that all structures used to confine the animals are locked with a key or combination lock when such animals are within the fenced yard, kennel, run or enclosure.
 - (6) Regularly inspect the fenced yard, kennel, dog run or enclosure to ensure that it is secure to maintain the animal and keep young children out.
 - (7) Allow inspections by any Animal Control Officer or peace officer at any reasonable hour of the premises or premises upon which the animal is maintained.
 - (8) Pay permit and property inspection fees as set forth in section 6.04.350 of

this Chapter within (10) ten calendar days of the permit issuance or renewal.

- (9) Obtain and post approved sign(s) from the Animal Control Program after payment of a non-refundable fee as set forth in Section 6.04.350 of this Chapter. Sign(s) shall be conspicuously posted in a manner visible to the public at all entrances to the property where the animal is kept, warning Persons of the presence of a Dangerous Animal as directed by the Animal Control Officer or peace officer. Such sign(s) must be surrendered in the event of the revocation of the permit, death of animal, or approved relocation of the animal.
- (10) Advise all members who reside in the same household and on the same premises of the conditions established by the permit for keeping or maintaining said Dangerous Animal.
- (11) Ensure said animal wears, at all times, a separate Dangerous Animal tag issued by the Animal Control Program in addition to complying with license requirements as defined in Section 6.04.040 of this Chapter.
- (12) Ensure said animal be microchipped and inform the Animal Control Officer with the microchip number within thirty (30) calendar days from the date the Dangerous Animal permit was issued.
- (13) Within forty-five (45) calendar days from the date the Dangerous Animal Permit was issued, unless this period is extended by the Animal Control Program Manager or city representative at their sole discretion, said animal shall be spayed or neutered by a California licensed veterinarian, at Owner expense, and within those forty-five (45) days, the Owner shall also present written proof to the Animal Control Officer that the surgery was performed. In the event an animal cannot be safely altered, due to a medical reason, the Owner shall present the Animal Control Program Manager and Animal Control Officer with a written request from a California licensed Veterinarian stating the medical reason(s) that the animal should not be altered. The County Health Officer or designee will approve or deny the request. If said request is denied, the animal shall be altered by a California licensed veterinarian within fifteen (15) calendar days from the date of notification that the request was not approved, and within those fifteen (15) calendars days provide such written proof to the Animal Control Officer that the surgery was performed.
- (14) Notify an Animal Control Officer and the Animal Control Program Manager of the animal's death within twenty-four (24) hours and produce the animal's body for verification upon request.
- (15) Notify an Animal Control Officer and the Animal Control Program Manager immediately in the event the animal becomes lost, stolen, or escapes from its fenced yard, kennel run, or enclosure.
- (16) Pay all reoccurring of additional fees within ten (10) calendar days of service of the invoice or annual permit. Non-payment of fee may result in

the permit being revoked unless a payment plan has been approved by the County or City.

- (17) Comply with all other permit conditions or requirements imposed by an Animal Control Officer, peace officer, or hearing officer pursuant to this Chapter.
 - (18) Comply with all local and state laws regarding the care, use, control, and maintenance of animals.
- (b) Any Owner of a Dangerous Animal shall ensure compliance with the following additional requirements, if directed to do so by an Animal Control Officer, peace officer and/or hearing officer:
- (1) Prove financial responsibility by posting a bond or certificate of insurance for an amount of three hundred thousand dollars (\$300,000) per animal within thirty (30) calendar days from the date of the Dangerous designation. Bond or certificate of insurance will be provided to the Animal Control Program Manager annually prior to expiration of said bond or certificate.
 - (2) Provide private behavioral and obedience training to the animal, at the Owner's expense and within the time set forth by the hearing officer or an Animal Control Officer following the issuance of a Dangerous Animal permit. Proof of participation, a report of behavioral assessment, and/or a certificate of satisfactory completion from an animal behaviorist or organization approved by an Animal Control Officer shall be provided to the Animal Control Officer and Animal Control Program Manager within seven (7) calendar days following the completion of the mandatory training, but not more than ninety (90) calendar days from the date of the Dangerous designation.
 - (3) Comply with any other permit requirements determined to be reasonably necessary to protect the public's health or safety and/or the health or safety of other animals.
- (c) No more than two Dangerous Animals may be kept by any Person(s) at any one household, residence, business, or other location, without prior written approval of the designee of the appropriate jurisdiction.

6.04.110 - Revocation or Modification of Dangerous Animal Permit.

- (a) Any Dangerous Animal permit issued pursuant to this Chapter may be revoked or modified by the inclusion of additional requirements or otherwise, if the Animal Control Officer or peace officer has reasonable cause to believe any of the following to be true:
- (1) The dangerous animal Owner or any Person to whom the Owner has given care, custody, or control of the animal has violated any local or state laws relating to the keeping, care or use of any animals.

- (2) The Owner or any Person to whom the Owner has given care, custody, or control of the animal has violated any Dangerous Animal permit conditions, or any requirement imposed by the Animal Control Officer, peace officer, or hearing officer.
 - (3) The Owner or any Person to whom the Owner has given care, custody, or control changed the location of his/her residence or his/her place of business or sells, assigns, transfers, donates, leases, or otherwise disposes of the animal for which the permit was issued without first notifying an Animal Control Officer as outlined in Section 6.04.090
 - (4) The Owner or any Person to whom the Owner has given care, custody or control of the animal has changed the residence or premises where the animal is maintained without first complying with the guidelines set forth in Section 6.04.090
 - (5) The Owner or any Person to whom the Owner has given care, custody, or control of the animal is unable or unwilling to comply with the conditions of the Dangerous Animal permit.
- (b) In the event that it is reasonably necessary to protect the public or an animal's health and safety, the Animal Control Officer or peace officer may impound or cause to be impounded the animal while an investigation is taking place.
 - (c) If, after investigation, the Animal Control Officer or peace officer concludes that there is probable cause to believe that one or more of the above conditions for revocation or modification of the permit has occurred, the officer shall deliver written notice of revocation or modification to the Owner. Said notice shall specify the grounds of revocation or modification of the permit. Should the Owner of the animal wish to contest the revocation or modification of the permit, the Owner may request an administrative hearing to be held before a hearing officer, as designated by the Animal Control Program Manager, within seven (7) calendar days of receiving the notice of revocation. Said administrative hearing date shall be not less than seven (7) calendar days or no more than (20) twenty calendar days after the date the request for hearing is received by the Animal Control Manager. The administrative hearing shall be conducted as set forth in section 6.04.150 of this chapter. The hearing officer conducting the hearing may either modify the terms of the permit or revoke the permit.

Any party to the hearing has the right to appeal the administrative hearing decision to the San Mateo County Superior Court by filing a Petition for a Writ of Administrative Mandate pursuant to California Code of Civil Procedure, Section 1094.5 and 1094.6.

- (d) Upon written notice by the Animal Control Officer, peace officer, or hearing officer, if a hearing was held, if any modifications to a Dangerous Animal permit are made, the Owner shall immediately comply with such modified permit requirements.

- (e) Upon written notice from an Animal Control Officer, peace officer or hearing officer of the revocation of a Dangerous Animal permit, the Owner of such animal shall within two (2) calendar days of such notification, surrender said animal to an Animal Control Officer. The Dangerous Animal shall be impounded and humanely euthanized unless the County designee or City designee has approved a different disposition. At the sole discretion of the appropriate City or County representative, such animal may be permanently removed from the County of San Mateo to another jurisdiction with written approval from that jurisdiction.

6.04.120 - Possession of Animals After Revocation of Dangerous Animal Permit.

No Person who has been determined to be in possession of or had Ownership of a Dangerous Animal for which a permit has been revoked under this chapter shall be granted any Dangerous Animal permit for a period of three years following such determination or revocation.

6.04.130 - Declaration of Vicious Animals.

- (a) No Person shall keep, have, maintain, sell, trade, or let for hire an animal which has been designated as Vicious under the provisions of this Chapter.
- (b) If an Animal Control Officer and/or peace officer has investigated and determined that an animal is Vicious, the Animal Control Officer or peace officer shall deliver written notice of such determination to the Owner of the animal. Service of notice shall be made in accordance with section 6.40.260 subdivision (a) of this Chapter. An Animal Control Officer and/or Peace Officer shall immediately impound the animal, or cause to be impounded, the animal according to the procedures set forth in Section 6.04.160 of this Chapter. The animal shall be deemed abandoned and shall be humanely euthanized unless the County designee or City designee has approved a different disposition or unless the Owner timely requests an administrative hearing.
- (c) In determining whether an animal shall be designated Vicious, in addition to any other facts and circumstances of the incident(s), the applicable decision-maker may consider the following potentially mitigating factors.
 - (1) Whether at the time of the injury, attack or molestation, the Person or animal suffering the injury, attack, or molestation:
 - (i) provoked, tormented, teased, abused, or assaulted the animal, thereby causing or contributing to the alleged behavior
 - (ii) committed a willful trespass or other tort upon the private property of the Owner or Caretaker of the animal; and/or
 - (iii) threatened or committed an unjustified attack or assault against the Owner, Caretaker, or other Person in control of the charged animal.

The failure of the Owner or other Person in control of a victim animal to have the animal on a leash shall not, in itself, constitute a mitigating factor in any attack.

- (2) Whether the Owner is willing and able to comply with the conditions of a Dangerous Animal permit, and whether the animal can be safely maintained on a Dangerous Animal permit considering the nature of the attack and cooperativeness and abilities of the Owner.
- (d) The decision-maker may also consider, among any other relevant facts and circumstances, the following factors:
 - (1) whether any of the animals involved were previously deemed by any governmental jurisdiction as, "dangerous", "vicious", or any other similar designation, and/or the animal Owner's prior compliance or lack thereof with any applicable Dangerous Animal permit requirements or this Chapter;
 - (2) the attacking animal's history of attacks, bites or threatening behavior;
 - (3) whether the animal demonstrated such aggressive behavior that it is reasonable to conclude that the animal cannot be safely maintained with a Dangerous Animal permit; and
 - (4) whether the Owner is unable or unwilling to comply with the conditions of a Dangerous Animal permit.
- (e) Should the Owner of the animal wish to contest the Vicious Animal designation, the Owner may request an administrative hearing to be conducted according to the procedures set forth in section 6.04.150 of this Chapter. The Owner shall submit a written request for a Vicious Animal hearing to the Animal Control Officer within seven (7) calendar days of the written notification by the Animal Control Officer and/or peace officer that the animal has been declared Vicious.
- (f) Should the Owner not submit a request for an administrative hearing within the required timeframe, the administrative hearing process shall be deemed waived, the Vicious Animal designation will be considered final for purposes of exhaustion of administrative remedies, and the animal will be subject to disposition by the Animal Control Officer, peace officer, or City or County designee. The Owner shall lose all rights of Ownership and control of the animal, and the animal will be subject to humane euthanasia, unless another disposition is deemed appropriate by a City and/or County designee, without further notice to the Owner.
- (g) The unwillingness of a victim or a particular witness to testify at a hearing shall not prevent designation of an animal as Vicious as long as sufficient evidence exists to support the designation.
- (h) If after investigation, an Animal Control Officer and/or peace officer determines that the animal is not Vicious, the Officer will prepare a written decision upon request by any victim suffering physical injury or an Owner of a victim animal, either of whom may appeal that determination. Any victim suffering physical injury as a result of the attack, or Owner of a victim animal, may appeal the determination that an animal is not Vicious by submitting, within seven (7) calendar days of the service of the decision pursuant to section 6.04.260, a written request to the Animal Control Officer for an administrative hearing and paying the required

fee as set forth in Section 6.04.350 of this Chapter. The administrative hearing shall be conducted according to the procedures set forth in section 6.04.150 of this Chapter.

6.04.140 - Providing False Information.

It shall be unlawful for a Person to willfully and knowingly provide false or misleading information to Animal Control Program staff, including but not limited to an Animal Control Officer, peace officer, Animal Control Program Manager, and/or hearing officer regarding animal ownership, licensing, rabies vaccination, medical treatment and condition, and/or any other matter pertaining to the enforcement of state or local law.

6.04.150 - Administrative Hearing Procedures.

- (a) Administrative hearings held under this Chapter shall be conducted by a hearing officer or designated representative appointed by the Director or designee of the San Mateo County Health Department. Any city contracting with the County for animal control services may elect to utilize the services of any San Mateo County designated hearing officer to conduct hearings on behalf of the city pursuant to that city's animal control ordinances. The hearings shall be scheduled no less than seven (7) calendar days and no more than fifteen (15) calendar days from the receipt of the request for the hearing unless the hearing officer finds good cause for continuance.
- (b) The Animal Control Officer or peace officer conducting the investigation shall provide their investigation report and any evidence gathered by the officer to the Animal Control Program Manager or designee no less than 72 hours prior to said administrative hearing. The Animal Control Program Manager or designee will promptly provide the report to the parties to the case, including the Owner of the subject dog and the Owner of the victim dog.
- (c) The administrative hearing shall be conducted in an informal manner consistent with due process of law. Any party may be represented by counsel. The parties may present relevant evidence including witnesses. The strict rules of evidence shall not be applicable. Any relevant evidence, including but not limited to hearsay evidence, may be admitted if it is the sort of evidence on which reasonable Persons are accustomed to rely on in the conduct of serious affairs. The hearing officer shall decide the matter based on preponderance of the evidence presented at the hearing. The administrative hearing shall be recorded, and all documentary evidence submitted at the administrative hearing shall be preserved by the Animal Control Program Manager for a period of no less than two years. Any party may arrange for a court reporter to be present. Any party desiring the presence of a court reporter shall make all necessary arrangements and shall be responsible for payment of all costs.
- (d) The hearing officer may exclude disorderly or disruptive Persons from the hearing or make other orders as necessary to ensure the fair and orderly conduct of the administrative hearing.

- (e) The hearing officer may decide all issues for or against the Owner(s) of the involved animal(s) even if the Owner(s) fail to appear at the hearing.
- (f) Within seven (7) calendar days of the administrative hearing, the hearing officer shall render a written decision, which shall be final for the purposes of exhaustion of administrative remedies upon the date of mailing. The Animal Control Program Manager or designee shall mail the written decision and affidavit/certificate of mailing showing the date of mailing, on behalf of the hearing officer, by first class mail, postage prepaid. The decision will be mailed to the Owner of the alleged Dangerous or Vicious Animal, the victim or Owner of the victim animal, and the investigating Animal Control Officer or peace officer.
- (g) If the animal is designated Dangerous, the Owner must apply for and obtain a Dangerous Animal permit as provided by this Chapter within seven (7) calendar days of the decision letter in order to maintain the animal and the Owner must comply with all mandatory Dangerous Animal permit rules and regulations as defined in section 6.04.120 of this Chapter. A hearing officer may impose additional permit requirements as set forth in this Chapter.
- (h) If the animal is designated Vicious, the Owner of such animal shall lose all rights of ownership and control of the animal, and the animal will be subject to humane euthanasia, unless another disposition is deemed appropriate by a City and/or County designee, without further notice to the Owner. An animal designated as Vicious will be held at the animal shelter for a minimum of seven (7) calendar days from the date of the hearing officer's decision, prior to any proposed euthanasia.
- (i) Unless the hearing officer for good cause otherwise determines, the party requesting the administrative hearing is liable for all costs related to such hearing. A determination by the hearing officer that the animal is not dangerous or vicious shall constitute good cause.
- (i) Hearing officer decisions are appealable to the San Mateo County Superior Court by filing a Petition for Writ of Administrative Mandate pursuant to California Code of Civil Procedure, Section 1094.5 and 1094.6.
- (k) The procedures and/or definitions pertaining to potentially dangerous and vicious dogs set forth in the California Food and Agricultural Code Chapter 9, beginning with section 31601, are not adopted and do not apply within San Mateo County. As authorized by Food and Agricultural Code section 31683, the County has adopted its own program for regulation of dangerous and vicious dogs as contained in this Chapter.

6.04.160 - Animals to Be Impounded.

- (a) The Animal Control Program may impound any animal kept or found under conditions that constitute a violation of this Chapter or other state or local law. The animal's Owner shall be responsible for all costs incurred or fees applicable with respect to such impoundment and maintenance in the shelter.

- (b) An Animal Control Officer or peace officer may impound or cause to be impounded an animal when there is reasonable cause to believe that such animal posed, or poses, a threat to the public's health and safety, or the health and safety of another animal. The animal may remain impounded for a period not to exceed fifteen (15) calendar days in order to investigate, and to determine whether or not said animal is Dangerous or Vicious as defined by this Chapter. In calculating the fifteen (15) calendar days, the first day of impoundment is not included. If an animal is not impounded within fifteen (15) calendar days after an investigation began, the Animal Control Officer or peace officer shall make a determination whether or not the animal is Vicious or Dangerous and shall notify the Owner of said animal as soon as reasonably practical thereafter.
- (c) Within twenty-four (24) hours of the impoundment of any animal, the impounding Animal Control Officer shall serve the Owner of the animal with notice of the impoundment.
- (d) No impounded animal may be redeemed unless and until any required license fee and/or other applicable charges and fees have been paid. In the event such animal is not redeemed within the time set forth by State law, it shall be deemed abandoned and may be adopted, transferred to a rescue, or disposed of in the manner determined by the Animal Control Program. The Animal Control Program shall issue to the Owner or Person responsible of the care, custody, and control of said animal a receipt showing an itemized description and the amount of the fee(s) paid.
- (e) The Animal Control Program shall keep a record of all animals impounded, which record shall include a description of the animal, the date of its receipt, the date and manner of disposal, the name of the Person redeeming, adopting, or purchasing, the fees, and/or charges related to the animal. Said records shall be kept for a period of seven (7) years.

6.04.170 - Stray Animals.

Any Person who finds or picks up a stray or lost animal shall report the same to the Animal Control Shelter within twenty-four hours thereafter and shall release such animal to the Animal Control Shelter upon demand.

6.04.180 - Epidemics.

The San Mateo County Health Officer may determine and declare that rabies or other contagious diseases are epidemic or that other health and safety hazards exist among dogs or other animals within the County. Upon the making of such a declaration, the Health Officer shall prepare and promulgate such orders, rules, and regulations as are necessary for appropriate control of all the animals concerned within the County. Said rules and regulations of the Health Officer may include, but are not limited to, impoundment, quarantine, vaccination, or destruction. It shall be the duty of the Animal Control Officers to assist the Health Officer in carrying out such rules and regulations.

6.04.190 - Bite Reporting Requirements.

- (a) Any Owner or other Person who is responsible for the care, custody, or control of an animal that bites a human or other animal shall provide their name and current residence address and telephone number and shall present their driver's license or other form of identification and any information regarding any rabies vaccination for the biting animal to the person bitten or the Owner of the animal bitten. If the Person bitten is a minor, the Owner or Person in control of the biting animal shall provide the required information to the parent or guardian of the minor.
- (b) In addition to the above requirements, it shall be the duty of any Person having knowledge of any animal which has bitten a human being or other animal within the County to immediately, in no case later than the end of the next calendar day, report the bite to an Animal Control Officer or peace officer and to furnish as much information as possible, including date, time and location of bite, description of animal or Person bitten, name and license number of the biting animal, and rabies vaccination history of the biting animal.

6.04.200 - Administrative Citations.

- (a) Should an Animal Control Officer, Humane Officer or peace officer determine that a Person has violated any provision this Chapter, that enforcement officer shall have authority to issue and serve notice of an administrative citation as set forth in section 6.04.260, to the Person violating the Chapter.
- (b) Each administrative citation shall contain the following information:
 - (1) The name and address of the Owner or other Person to be cited.
 - (2) The date(s) of the violation.
 - (3) The address or a specific description of the location where the violation occurred.
 - (4) The section, subsection, and/or provision of this Chapter violated by the Person cited and a description of that violation.
 - (5) A prohibition of the continuation or repetition of the violation described in the administrative citation.
 - (6) If applicable a description of the potential consequence(s) should the violation continue or be repeated.
 - (7) Either:
 - i) The amount of the administrative fine charged and to be paid by the Person cited as a result of the violation; or

- ii) A notice to correct a certain violation within a reasonable time, and the amount of an administrative fine that may occur if the violation is not corrected or remedied by the date specified.
- (8) A description of the procedure to pay the fine, to include the time period for and place of payment, and the process by which the County may collect any unpaid amount owed.
- (9) A description of the administrative citation review process, including the time within which the administrative citation may be appealed and how to appeal the administrative citation, including any form to do so.
- (10) The name and signature of the citing Animal Control Officer, Humane Officer or peace officer or County designee.
- (c) An administrative citation may be any format, including letter, which conveys the information set forth above.

6.04.210 - Appeal of Administrative Citation.

- (a) A recipient of an administrative citation may contest the citation including, but not limited to, on the basis that the underlying violation did not occur, or that recipient is not the party responsible for the violation and thus was the improper recipient of the administrative citation. The recipient must contest the citation on the form provided by the Animal Program Manager or Animal Control Officer and file the appeal with the Animal Control Program Manager within twelve (12) calendar days from the date of service of the administrative citation. Any appeal not timely filed will be rejected.
- (b) The appeal shall contain the following provided by the Person appealing the citation:
 - (1) The name, mailing address, and telephone number of the party requesting the appeal;
 - (2) A copy of the administrative citation or a reference number thereto;
 - (3) A statement of the grounds for the contest, including a description of the evidence to be presented in support of the contest and copies of any statements or documents to be submitted at the hearing in support of the appeal.
 - (4) The signature of the appealing party;
 - (5) A deposit of the fine assessed as set forth in the citation(s), to be refunded if the appeal is successful.
- (c) Should an appeal be properly and timely requested, the requesting party shall be provided a hearing before a hearing officer to be held pursuant to the procedures set forth in section 6.04.150 as applicable. The Animal Control Program shall notify

the Person requesting the appeal hearing of the time and place set for the hearing pursuant to section 6.04.260.

6.04.220 - Payment of Administrative Fines.

- (a) In the absence of an appeal by the recipient of the administrative citation, the Person cited shall pay the administrative fine in full within thirty (30) calendar days from the date of service of the notice of citation. In the event of an appeal, after which the violation is upheld, if not already paid, the fine shall be paid in full within ten (10) calendar days after the date that the decision of the hearing officer was served on the recipient.
- (b) Payment of any fine shall not excuse the failure to correct the violation, nor shall it bar further enforcement of the same or any similar violation or any other violation by any applicable means.
- (c) Failure to pay any fines assessed within the guidelines set forth in this Chapter will result in a late charge pursuant to section 6.04.230, which will be collected by the Animal Control Program Manager.

6.04.230 - Amount of Administrative Fines.

- (a) Any Person issued an administrative citation for a violation of, and pursuant to, this Chapter shall be assessed and pay a fine as follows:
 - (1) One hundred dollars (\$100) for a first citation.
 - (2) Two hundred dollars (\$200) for a second citation for the same violation within a one-year period.
 - (3) Five hundred (\$500) for each additional citation for the same violation within a one-year period.

6.04.240 - Misdemeanor Violations.

- (a) A Person violating any provision of this Chapter shall be guilty of an infraction except as otherwise specifically provided.
- (b) A Person violating any provision of section 6.04.050, subsection (a) of section 6.04.090 or subsection (a) of section 6.04.130 of this Chapter shall be guilty of a misdemeanor.
- (c) This section shall not limit any other available criminal, civil or administrative remedies. Any or all applicable remedies shall remain available for violation of the provisions of this Chapter.

6.40.250 - Violation of Chapter a Public Nuisance; Remedies Cumulative.

- (a) Violation of this Chapter is a public nuisance subject to any and all applicable civil, administrative, and criminal remedies, according to the provisions and procedures set forth in this Chapter and other applicable state and local law.
- (b) This section is not intended to limit any other available criminal, civil or administrative remedies. Any or all applicable administrative, civil and /or criminal remedies shall be available for violation of the provisions of this Chapter.
- (c) Each day a violation continues shall constitute a separate violation.

6.40.260 - Service of Documents and Notices.

- (a) Unless otherwise specified herein, the appropriate representative of the Animal Control Program shall provide any required notice or service of documents in the one of the following manners: (1) by personal delivery to the Person to be notified or served; or (2) by posting on the property at the address where the subject animal is licensed or the Owner of such animal resides; or (3) by depositing in the United States Mail, in a sealed envelope, first class postage prepaid, and addressed to such Person to be notified or served at their last-known business or residence address or as the same appears in the last equalized County assessment roll. Service by mail shall be deemed complete at the time of deposit in the United States Mail receptacle and shall include a declaration or affidavit of service which shall include notice of the date mailed. If agreed in writing by the Person to be served, notices or documents may be served electronically at the address provided by the Person to be served, to be effective upon being sent.
- (b) Failure to receive any notice specified herein does not affect the validity of proceedings conducted hereunder.

6.04.270 - Field Return Fee.

A fee shall be charged for any animal impounded by a representative of the Animal Control Program and returned by an Animal Control Officer in the field to the Owner or Person who is responsible for the care, custody, or control of the animal. The fee charged shall be paid by the Owner or Person who is responsible for the care, custody, or control of said animal. Such fee shall be set forth in Section 6.04.350.

6.04.280 - Redemption and Spay/Neuter Fee.

- (a) Upon redemption of any impounded unaltered animal, the Person responsible for the care, custody or control of any animal will be required to pay a spay or neuter fee in the amount of \$100.00 in addition to the impound fees imposed under Section 6.04.350 of this Chapter. Such fee shall be refundable upon proof of spay and neuter of the animal within thirty (30) calendar days following the date of redemption.
- (b) Any unaltered animal impounded twice or more within a three-year period shall be altered at a cost to be paid by the Owner/Caretaker or person responsible for the care, custody, or control of said animal prior to redemption. At the option of the Owner/Caretaker or Person responsible for the care, custody, or control of said

animal, required spaying or neutering may be performed by a private veterinarian within thirty (30) calendar days.

- (c) Any Owner or Caretaker of an impounded animal subject to mandatory spay/neuter under Subsection (b) of this Section may appeal this requirement by submitting a written request for an administrative hearing to the Animal Control Program Manager. The administrative hearing will be conducted according to the provisions of Section 6.04.150 of this Chapter.
- (e) The Animal Control Program Manager may waive any County or City fee for County or City spay/neuter, vaccination or impoundment of an animal, if the animal is a feral or stray cat and the Person bringing the animal to the shelter agrees that the Person shall have no rights in the animal or any right to direct or control treatment or disposition of the animal by the Animal Control Program which will retain sole discretion in determining the disposition of the animal, which may include but not be limited to treatment and/or adoption, or euthanasia.

6.04.290 - Quarantine Fee.

A quarantine fee, as set forth in Section 6.04.350, shall be paid by the Owner or Caretaker of any animal involved, or potentially involved, in a bite. Such quarantine fee is in addition to any other fees charged set forth in Section 6.04.350 of this Chapter to recover costs incurred by the Animal Control Program for the sheltering and caring for the quarantined animal.

6.04.350 - Schedule of Fees and Charges.

This Section 6.04.350 sets forth the fees for the Animal Control Program and Licensing Program. No animal shall be released to its Owner, or other person responsible for the care, custody, or control of the animal, unless applicable fees have been paid.

Animal Control and Licensing fees and charges established by this code are as follows:

(a) License Fees

DOGS	
Unaltered dog	
1-year license	\$55.00
3-year license	\$160.00
Unaltered dog Senior Pet Owner (over 60 yrs.)	
1-year license	\$23.00
3-year license	\$64.00
Altered dog	
1-year license	\$25.00
3-year license	\$70.00
Altered dog Senior Pet Owner (over 60 yrs.)	

1-year license	\$10.00
3-year license	\$25.00
Misc. dog fees	
Late fee	\$20.00
Duplicate tag	\$10.00
CATS	
Unaltered cat	
1-year license	\$20.00
3-year license	\$55.00
Unaltered cat Senior Pet Owner (over 60 yrs.)	
1-year license	\$12.00
3-year license	\$31.00
Altered cat	
1-year license	\$8.00
3-year license	\$19.00
Altered cat/ Senior Pet Owner (over 60 yrs.)	
1-year license	\$5.00
3-year license	\$12.00
Misc. cat fees	
Late fee	\$7.00
Duplicate tag	\$5.00

(b) Redemption Charges

Type A & B (large or medium size animals — horses, cows, hogs, sheep, etc.)	
Impound cost	\$100.00
Board cost per day	\$30.00
Trailing cost (per use)	\$100.00
Type C (dogs, and cats)	
Impound Costs — First Impound	
Altered — licensed, wearing tag	\$40.00
Unaltered — licensed, wearing tag	\$65.00
Altered — unlicensed, no tag	\$55.00
Unaltered — unlicensed, no tag	\$85.00
Impound Costs — Second Impound	
Altered — licensed, wearing tag	\$90.00
Unaltered — licensed, wearing tag	\$125.00

Altered — unlicensed, no tag	\$105.00
Unaltered — unlicensed, no tag	\$140.00
Impound Costs — Third Impound	
Altered — licensed, wearing tag	\$135.00
Unaltered — licensed, wearing tag	\$155.00
Altered — unlicensed, no tag	\$155.00
Unaltered — unlicensed, no tag	\$180.00
Impound Costs — Fourth Impound	
Altered — licensed, wearing tag	\$180.00
Unaltered — licensed, wearing tag	\$215.00
Altered — unlicensed, no tag	\$200.00
Unaltered — unlicensed, no tag	\$240.00
Impound Costs — Fifth Impound and up	
Altered — licensed, wearing tag	\$225.00
Unaltered — licensed, wearing tag	\$260.00
Altered — unlicensed, no tag	\$245.00
Unaltered — unlicensed, no tag	\$285.00
Board charges (per day)	
Altered — dogs/	\$25.00
Unaltered — dogs/	\$35.00
Altered — cats	\$16.00
Unaltered — cats	\$22.00
Type D (small size animals, e.g., birds, hamsters, or other)	
Impound cost	\$20.00
Board cost	\$10.00

(c) Surrender, Euthanasia and DOA (Dead on Arrival) Disposal Fees

Dog — Licensed or unlicensed	
Surrender	\$60.00
Euthanasia	\$50.00
DOA Disposal	\$30.00
Cat — Licensed or unlicensed	
Surrender	\$60.00
Euthanasia	\$50.00
DOA Disposal	\$30.00
Rabbit/Small Animal	
Surrender	\$40.00
Euthanasia	\$30.00
DOA Disposal	\$15.00

Litter of Three or more		
Surrender		\$50.00
Euthanasia		\$40.00
DOA Disposal		\$20.00
Bird/Fowl		
Surrender		\$20.00
Euthanasia		\$15.00
DOA Disposal		\$20.00
All Other Companion Animals (Reptiles, Amphibians, etc.)		
Surrender		\$25.00
Euthanasia		\$25.00
DOA Disposal		\$20.00
Farm Animals		
Surrender		\$60.00
Euthanasia:	Under 100 pounds	\$60.00
	Over 100 pounds	\$125.00
DOA Disposal:	Under 100 Pounds	\$30.00
	Over 100 pounds	\$100.00

(d) Other Animal Control Fees

Quarantine Fee	\$60.00
Dangerous Animal Permit (DAP) Fee	\$300.00
DAP Inspection Fee	\$100.00
DAP Signage	\$15.00
Field Retrieval/Return Fee	\$40.00
Breeding Permit Fee	\$150.00
Fancier Permit and/or Exotic Pet Fee	\$100.00
Return Check Fee	\$25.00
Service Dog Application Processing Fee	\$50.00

(e) Miscellaneous Fee Provisions

- (1) The Animal Control Program, and/or Licensing Program, may establish license discounts for recognized animal rescue organizations.
- (2) License fees include a one dollar (\$1) annual surcharge on all licenses for the animal population trust fund.
- (3) At the discretion of the Animal Control Program Manager, a payment plan for all fees outstanding may be permitted upon a showing of good cause. If a Person is in compliance with an agreed upon payment plan, their outstanding balance shall never be considered “nonpayment” as that term is used in this Chapter.

- (4) The animal control fees for any animal related service not specified in this section shall be reviewed by the Chief of Health or their designee for reimbursement of costs. The Chief of Health or their designee shall have the authority to determine the fee charged for said services. The fee charged shall be paid by the Owner or Caretaker of the animal(s) for which said service(s) have been provided.
- (5) Each calendar year, the Animal Control Program Manager shall designate one month as an amnesty period for payment of cat and dog license late fees and for compliance with section 6.04.020 of this Chapter, as provided herein. During the amnesty period, applicants for cat and dog licenses shall not be assessed any late penalty fee or any other penalty for failure to obtain such license or pay any applicable license fee, notwithstanding sections 6.04.040 and 6.04.350 of this Chapter.
- (6) All revenue derived from the fees, fines, forfeitures, and penalties related to the enforcement of this ordinance shall be used to offset the cost of enforcement and administration of this Chapter.
- (7) If the Animal Control Program Manager determines that payment of any fees by the Owner or Caretaker for an impounded animal would cause extreme financial difficulty to the Owner or Caretaker, and that it is in the best interests of the County to allow release of the animal upon these terms, the Animal Control Program Manager may, at their discretion, set up a payment plan or waive all or part of the fees incurred for the animal.

SECTION 3.

Chapter 6.08, 6.12, 6.16, 6.20, 6.22, 6.24, and 6.28, are hereby repealed in their entirety.

SECTION 4.

Severability. If any section, subsection, provision or part of this Ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this Ordinance, and the application of such provision to other person or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this Ordinance are severable.

SECTION 5.

Environmental Determination. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as provided by the Act, in that it does not have a potential for resulting in a detrimental physical change in the environment, directly or ultimately, as provided in Title 14, Section 15378(a), and that it is also exempt under the definition of "project" in Section 15378(b)(3) in that it concern general policy and procedure making.

SECTION 6. **Publication and Effective Date.** Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk's Office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk's Office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This ordinance shall become effective on January 1, 2020.

Introduced this 22nd day of January , 2024.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the day of , 2024, by the following vote:

AYES, Councilmembers: _____

NOES, Councilmembers: _____

ABSENT, Councilmembers: _____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MAYOR OF THE CITY OF DALY CITY