



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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October 4, 2016

Ms. Rebecca Foster  
Director of Social Impact Investment  
Office of the Mayor  
[rebecca.foster@sfgov.org](mailto:rebecca.foster@sfgov.org)  
*By email only*

RE: September 22, 2016, Request for Informal Advice

Dear Ms. Foster:

This letter responds to your request of September 22, 2016, in which you asked the Ethics Commission for informal advice and clarification regarding the following questions:

- 1) What post-employment restrictions govern my communications with the Mayor's Office during the 12-month period following my exit from City service under San Francisco Campaign & Governmental Conduct Code (SF C&GCC) § 3.234(a)(2)?
- 2) Does the one-year communications ban apply to the Office of Economic Workforce Development or "other city departments not within the Mayor's Office, such as the Planning Department?"

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. San Francisco Charter § C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester with immunity from subsequent enforcement action if the material facts are as stated in the request for advice. *Id.* Informal advice does not provide similar protections. *Id.* Because your request seeks advice regarding hypothetical facts and does not describe a specific situation involving your responsibilities, the Commission is treating your letter as a request for informal advice. In other words, this letter does not convey immunity from enforcement should you violate the provisions of SF C&GCC § 3.234(a)(2).

### Background

On July 20, 2016, you sent the Ethics Commission a letter requesting a waiver from one of the City's post-employment restrictions—the one-year ban on communicating with your former department "with intent to influence a government decision." San Francisco Campaign & Governmental Conduct Code (SF C&GCC) § 3.234(a)(2). According to your July 20, 2016, letter, you currently serve as the Director of Social Impact Investment in the Mayor's Office. As part

of your duties, you helped set up a “government supported” 501(c)(3) non-profit organization known as the Housing Accelerator Fund.

In April, the Mayor’s Office of Housing and Community Development (MOHCD) issued a Request for Qualifications for a non-profit loan fund to “raise capital, reduce capital costs, leverage funds, and improve availability of financing for private-party affordable housing acquisitions and repairs in San Francisco.” See Request for Qualifications (RFQ), April 22, 2016, p. 1. MOHCD promised to loan \$10 million to the selected applicant “as an anchor investment necessary to attract external, low-cost financing resources.” RFQ, p. 4. The Housing Accelerator Fund was the only non-profit organization to respond to the RFQ, so MOHCD selected the Fund to receive the City’s \$10 million anchor grant. You would like to apply to be the Executive Director for the Housing Accelerator Fund, a position your hope to secure prior to leaving the Mayor’s Office.

On September 15, 2016, you met with Executive Director LeeAnn Pelham and me to go over your request for a waiver from the one-year communications ban set forth in section 3.234(a)(2). You explained that as Executive Director of the Housing Accelerator Fund, you will carry out City policy without the opportunity or intent to influence that policy. You described the Fund—and its Executive Director—as an “arm of the City.” Moreover, you explained that during the first twelve-months of your employment with the Fund, you would need to speak with Mayor’s Office employees to set up the Fund so that in comports with the Mayor’s vision; execute organizational set-up; gather information about the Mayor’s Office’s priorities; relay information from the Fund’s Board of Director’s and Creditor Committee, etc. You also detailed how the Fund will work in practice; noted that the primary stakeholders in the Fund are the City and a handful of non-profit, grant-making foundations; and identified the two Board Members for the Fund as current City employees involved.<sup>1</sup>

On September 22, 2016, you sent the Ethics Commission a new letter withdrawing your request for a waiver and instead asking for advice and clarification as noted above.

## **Discussion & Analysis**

The purpose of the City’s post-employment restrictions are found directly in the the Campaign & Governmental Conduct Code: “Government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis.” SF C&GCC § 3.200(e). The practice of former officers and employees communicating with their former colleagues on behalf of private interests “creates the potential for, and the appearance of, undue influence, favoritism, or preferential treatment.” *Id.* Prohibiting former officers and employees “from communicating orally, in writing, or in any other manner with their former colleagues for specified periods of time will eliminate both actual and perceived undue influence, favoritism, or preferential treatment without creating unnecessary barriers to public service.” *Id.*

Employees who wish to leave public service to work for private organizations enjoy fairly comprehensive guidance from the City at Section 3.234 of the SF C&GCC. Part (A)(2) guides this situation and prevents

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<sup>1</sup> The Mayor’s Office of Housing and Community Development Olson Lee serves on the Board for the Housing Accelerator Fund, as well as Director of Public Finance Nadia Sesay.

employees from communicating with their former departments “with the intent to influence a government decision” after separating from the City for a one-year period—known as a “cooling off” period. This broad, straightforward rule was designed to further the City’s stated goal to “eliminate both actual and perceived undue influence, favoritism, or preferential treatment . . .” SF C&GCC § 3.200(e).

Section 3.234(a)(2) states in its entirety:

(2) **One-Year Restriction on Communicating with Former Department.** No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

**Question 1:** Based on your September 22, 2016, description of proposed post-employment communications and interactions with the Mayor’s Office, your communications with former colleagues in the Mayor’s Office should not violate section 3.234(a)(2)’s one-year ban so long as you do not communicate “with intent to influence a government decision” during the one-year post-employment restriction. See SFC&GCC § 3.234(a)(2). However, any attempt to change government policy, convince the Mayor’s Office to take a different position, or simply advocate for a slight change in operations, etc. could result in a plain violation of section 3.234(a)(2). Accordingly, Staff advise that you proceed with caution. If, over the next twelve months, opportunities for influence or advocacy arise that you did not anticipate, please refrain from communicating with your former colleagues and contact Commission Staff to determine whether the facts of your specific situation change this analysis if appropriate.

**Question 2:** Section 3.234(a)(2) prohibits you from communicating—whether orally or in writing—with any officer or employee of the department, board, commission, office, or other unit of government, in which you served for a twelve-month period after you exit City service. Because you worked in the Mayor’s Office, this prohibition will bar you from communicating with anyone who also works in the Mayor’s Office during the one-year, post-employment period. This prohibition does not prevent you from communicating with other City departments, boards, or offices, including but not limited to the Office of Economic Workforce Development and the Planning Department.

As always, if you have any questions, please contact me at (415) 252-3100, or Deputy Director Jessica Blome at ext. 23116 or [jessica.blome@sfgov.org](mailto:jessica.blome@sfgov.org).

Sincerely,

/s/ LeeAnn Pelham  
Executive Director

Attachments: Request for Qualifications  
July 20, 2016, Letter  
September 22, 2016, Letter

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



**Edwin M. Lee**  
Mayor

**Olson Lee**  
Director

# ***Request for Qualifications***

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For the selection of a qualified, existing non-profit loan fund to raise capital, reduce capital costs, leverage funds, and improve availability of financing for private-party affordable housing acquisitions and repairs in San Francisco.

Issued: **April 22, 2016**, by:

San Francisco Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Responses due by close of business on **May 6, 2016**.

## I. INTRODUCTION

The City of San Francisco seeks to create and support healthy, vibrant neighborhoods across the economic spectrum. Key to achieving this goal is housing affordability. Through the Mayor's Office of Housing and Community Development, the City is devoting unprecedented resources to affordable housing development and preservation. One avenue in this effort that the City desires to encourage is accessing and leveraging cost-effective third-party capital and creating new, innovative financing vehicles for affordable housing that private parties can access.

**Hard copy and electronic responses to this RFQ must be received by the Mayor's Office of Housing and Community Development no later than 5:00 p.m., May 6, 2016. Facsimile responses will not be accepted.**

General terms used in this RFQ. The "Respondent" refers to any entity submitting a response to this Request for Qualifications ("RFQ") to be considered for selection.

## II. IMPORTANT DATES AND SUBMISSION PROCESS

### A. IMPORTANT DATES

|   |                            |
|---|----------------------------|
| RFQ available on MOHCD website  | <b>April 22, 2016</b>      |
| Pre-submission conference at MOHCD  | <b>April 29, 2016</b>      |
| Deadline for questions and requests for additional information              | <b>May 2, 2016</b>         |
| <u>Deadline for submitting qualifications</u>                               | <b>May 6, 2016</b>         |
| Notification to Respondent teams who failed to meet submission requirements | <b>Week of May 9, 2016</b> |
| Respondent team interviews, if necessary                                    | <b>Week of May 9, 2016</b> |
| Staff recommendation to MOHCD Director                                      | <b>Week of May 9, 2016</b> |

### B. PRE-SUBMISSION MEETING

A pre-submission conference will be held at MOHCD, located at 1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, on April 29, 2016 at 10:00am. The purpose of the meeting is to ensure that interested respondents understand the requirements. Questions raised at the conference may be answered verbally at that time. If any substantive new information is provided in response to questions raised at the pre-submission conference, MOHCD will issue a written addendum to the RFQ with this information to all parties that have registered for the RFQ. No questions or requests for interpretation will be accepted after April 27, 2016 at 12:00 p.m. Attendance at the pre-submission conference is not mandatory but is highly recommended.

### **C. REGISTRATION FOR RFQ REQUIRED**

In order to receive MOHCD's responses to requests for additional information and to questions about this RFQ and to submit a qualification submission, all interested parties must submit a completed RFQ Registration Form to MOHCD. The form is included with the RFQ as **Attachment 2**. Please submit registration forms by email to the contact person named in Section IIE.

### **D. QUESTIONS AND REQUESTS FOR INFORMATION**

All questions and requests for additional information regarding this RFQ must be received in writing by MOHCD, by hand, overnight delivery, mail, fax, or e-mail by May 2, 2016, at 12:00 p.m. Questions received after the deadline may not be answered. All addenda, responses and additional information will be distributed to all parties who have submitted a registration form in accordance with Section IIC above. MOHCD reserves the sole right to determine the timing and content of the response, if any, to all questions and requests for additional information. Questions and information requests should be submitted to the contact person named in Section IIE.

### **E. CONTACT PERSON, SUBMISSION DEADLINE AND PLACE**

All communications about this RFQ should be directed to Mara Blitzer, Director of Housing Development, at (415) 701-5544, Fax (415) 701-5501, mara.blitzer@sfgov.org, or at the address below.

Respondents to this RFQ must submit one (1) hard original plus three (3) hard copies of their proposals, as well as one electronic copy on a flash drive, or Dropbox link, to the MOHCD receptionist no later than:

**5:00 p.m. on Friday, May 6, 2016**

at

**Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: Director of Housing Development**

## **III. BACKGROUND**

The mission of the Housing Division of the Mayor's Office of Housing and Community Development is to guide and coordinate the City's housing policies; to finance the development, rehabilitation and preservation of affordable housing in San Francisco; and to provide resources for a wide variety of housing-related programs benefitting low- and moderate-income households, including, for example, down-payment assistance loan programs, eviction defense support, and first-time-buyer educational opportunities. MOHCD also provides asset management for the City's affordable housing stock to ensure long-term affordability and physical viability of this valuable resource.

While MOHCD's affordable housing financing programs are well-established and currently benefit from deep resources provided through voter action (especially the San Francisco Housing

Trust Fund and the 2015 General Obligation Housing Bond [“Proposition A”]) as well as local exaction requirements (e.g., Affordable Housing Fees, Jobs Housing Linkage Fees), the demand and need for affordable housing exceeds the City’s resources. To complement its ongoing efforts, the City seeks to engage a nonprofit lending entity that will put more capital into the City, leverage those outside funds, and make available to private development firms additional resources that the City itself cannot access, such as the U.S. Treasury Department’s Community Development Financial Institutions Fund (CDFIF).

#### **IV. CITY FUNDING.**

To leverage additional capital in San Francisco, MOHCD intends to lend Ten Million Dollars (\$10,000,000) to the selected Respondent as an anchor investment necessary to attract external, low-cost financing resources.

#### **V. SELECTION PROCESS, SELECTION CRITERIA AND SUBMITTAL REQUIREMENTS.**

##### **A. SELECTION PROCESS**

MOHCD staff will review all submittals for completeness and satisfaction of minimum experience and capacity requirements.

A Selection Panel will be appointed by the Director of the Mayor’s Office of Housing and Community Development composed of City staff with expertise in residential real estate transactions, responsible for evaluating submissions, scoring responses, conducting reference checks and interviews, if applicable.

The Selection Panel may interview all Respondents who meet the RFQ’s minimum qualifications, at which time Respondents will be asked to present and explain the major characteristics of their qualifications, particularly as they relate to the Scoring Criteria, and respond to questions from the Selection Panel. After all interviews have been completed, the Selection Panel will meet to determine the final ranking of all responses and present this ranking to the Director.

The Selection Panel’s scoring of each proposal will be done by consensus and will be final. No appeals of the scores determined by the Selection Panel will be accepted.

The MOHCD Director will then select a Respondent, and MOHCD will exclusively negotiate a loan agreement per the terms of this RFQ.

##### **B. MINIMUM QUALIFICATIONS**

The Respondent selected through this RFQ must:

- 1) Be an independent 501(c)(3) lending entity that complements San Francisco’s affordable housing efforts but does not rely on the City for ongoing financial support.

- 2) Demonstrate willingness to create a new, low cost fund that is exclusively for the benefit of San Francisco.
- 3) Demonstrate past experience working with other localities and assisting financing opportunities in those cities.
- 4) Demonstrate successful experience executing and administering loans to private parties;
- 5) Demonstrate the ability, based on past experience, to efficiently leverage San Francisco's contribution (see Section IV above) with other resources the Respondent is fully responsible for procuring, including those that might be unavailable to the City of San Francisco, such as the Community Development Financial Institutions Fund (CDFIF) and the California Organized Investment Network (COIN).

Respondents may satisfy these minimum requirements through consultants hired under contracts lasting at least 12 months from the date of this RFQ issuance.

Any submission that does not clearly demonstrate satisfaction of the minimum qualifications described above will be considered non-responsive and will not be evaluated.

### **C. SELECTION CRITERIA**

This section describes the guidelines used for analyzing and evaluating responses to this RFQ. It is MOHCD's intent to select one Respondent with which to enter into negotiations for a loan agreement. This RFQ does not in any way limit MOHCD's right to solicit respondents for similar or identical services or to terminate this RFQ for any reason.

The Evaluation Team will review each RFQ response that meets the Minimum Qualifications and competitively assess the best submission based upon:

- 1) Creation of a fund exclusively committed to the San Francisco market.
  - a. Respondents should demonstrate knowledge of San Francisco demographics, housing needs, existing affordable housing programs, and the ability to create a new low cost fund to exclusively serve San Francisco.
- 2) Ability to attract and leverage below-market capital for affordable housing uses.
  - a. Respondent should indicate how they intend to leverage the City's commitment (see Section IV above), with other potential sources of capital.
  - b. Respondents should demonstrate a knowledge of capital markets and all potential funding sources for affordable housing development, including, but not limited to, public and private lending institutions, program-related investment funds, the CDFIF, and the State's COIN tax credit.
  - c. Respondents should describe their ability to reduce capital costs below those available from conventional lenders and investors.
- 3) Experience working with localities to complement their publicly-funded affordable housing programs.

- a. Respondents should describe their financing experience in other localities, including types of projects supported, capital sources, leveraging ratios, and other relevant information related to specific local markets.
- 4) Experience successfully executing and administering loans.
- a. Respondents should describe loan administration experience and their ability to administer a loan fund with low operating and administrative costs, ideally capping such costs at 2%.

#### Written Response Evaluation (100 points)

Respondents should provide short and concise written narrative responses to the four (4) Evaluation Criteria provided above. As with the Minimum Qualifications, the experience of consultants hired by the Respondent under contracts lasting at least 12 months from the date of this RFQ issuance may substitute for the experience of Respondents' hired staff and/or Board Members.

Twenty-five (25) points shall be assigned to each Evaluation Criteria in the Evaluation Team's scoring of submissions.

Along with the four narratives, respondents should also provide a signed copy of Exhibit C, the Disclosures, with their completed submission.

#### **D. SUBMITTAL DEADLINE AND OTHER IMPORTANT DATES**

Pre-Submittal Meeting: **April 29 at 9:00am** at the Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco. The meeting will include a short presentation on the RFQ. Prospective respondents will have the opportunity to ask clarifying questions at this meeting and/or by email [mara.blitzer@sfgov.org](mailto:mara.blitzer@sfgov.org). All questions and their answers will be posted on the MOHCD website.

RFQ mailing list: All attendees at the Pre-Submittal Meeting or registered with MOHCD will be added to an RFQ email list along with any others who may ask to be included. This list will be used to send the RFQ itself when it is issued, to notify all interested parties of any Addenda to the RFQ, changes in the schedule, and/or RFQ-related postings on the MOHCD website that may occur prior to issuance. The same information along with the RFQ itself will be posted on the MOHCD website.

Submittal Deadline: Deliver three (3) hard copies of the Proposal including all attachments by **5:00 p.m. May 6, 2016** to MOHCD, 1 South Van Ness Avenue, 5<sup>th</sup> Floor reception, attention: Mara Blitzer. In addition, email a complete proposal including attachments to:

**Mara Blitzer** ([mara.blitzer@sfgov.org](mailto:mara.blitzer@sfgov.org))

Scoring and Ranking: All respondents will be notified by **May 9, 2016**, as to whether their proposal was complete, met the minimum experience and capacity requirements and if so, how they were scored by the Selection Panel. The Selection Panel will interview qualified respondents to help determine RFQ response scoring.

Interviews: The Selection Panel may schedule interviews with qualified development teams during the **week of May 9, 2016**, unless otherwise notified by MOHCD staff. MOHCD has sole and absolute discretion over whether interviews will be conducted or not.

Final Selection: Subject to approval by the Director of MOHCD, final selection is anticipated to be completed by the **week of May 9, 2016**.

Other Terms and Conditions: The selection of any Respondent for loan agreement negotiation shall not imply acceptance by MOHCD of all terms of the response, which may be subject to further negotiation and approvals before MOHCD may be legally bound thereby.

If a satisfactory loan agreement cannot be negotiated in a reasonable time with any pre-qualified Respondent, then MOHCD, in its sole discretion, may terminate negotiations.

## **VI. TERMS AND CONDITIONS OF REQUEST FOR QUALIFICATIONS**

### **A. RESPONDENT RESPONSIBILITIES**

The selected developer will be responsible for all aspects of management of the fund, including but not limited to, compliance with the following requirements:

- Insurance Requirements – see Exhibit A
- City Requirements, see Exhibit B

### **B. ERRORS AND OMISSIONS IN RFQ**

Respondents are responsible for reviewing all portions of this RFQ. Respondents are to promptly notify MOHCD, in writing, if the respondent discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to MOHCD promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

### **C. ADDENDA TO RFQ**

MOHCD may modify the RFQ, prior to the response due date, by issuing written addenda. Addenda will be sent via email to the last known address of each person or firm listed with MOHCD as having received a copy of the RFQ for proposal purposes. MOHCD will make reasonable efforts to notify Respondents in a timely manner of modifications to the RFQ. Notwithstanding this provision, the Respondent shall be responsible for ensuring that its proposal reflects any and all addenda issued by MOHCD prior to the proposal due date regardless of when the proposal is submitted.

### **D. SUNSHINE ORDINANCE**

In accordance with San Francisco Administrative Code Section 67.24(e), contractors' bids, responses to RFQ's and all other records of communications between the City and persons or firms

seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

## **Exhibit A: Insurance Requirements**

### **1. Developer, Contractors.**

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

(b) commercial general liability insurance, with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Developer is conducting any activity on, alteration or improvement to the Family Site with risk of explosions, collapse, or underground hazards;

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

(d) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Developer's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Developer shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

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

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall be endorsed to include Non-Owned Disposal Family Site coverage. This policy may be provided by the Developer's contractor, provided that the policy must be "claims made" coverage and Developer must require Developer's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

### **2. Property Insurance.**

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

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of the Developer or its contractor, including coverage in transit and storage off-Family Site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

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

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

(c) Upon completion of construction:

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

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

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

3. Commercial Space.

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

(a) to the extent the tenant has "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident;

(b) commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; advertisers' liability; including coverage for loss of income due to an insured peril for twelve (12) months; owners' and contractors' protective; broadform property damage; explosion, collapse and underground (XCU); products and completed operations coverage;

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

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

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

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

4. General Requirements.

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

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

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

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

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

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

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

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

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

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

## **Exhibit B**

### **City Requirements**

## Exhibit B

### City Requirements

#### 1. Nondiscrimination; Penalties.

(a) *Nondiscrimination.* In the performance of this [Site Lease/Sublease/Trust Agreement/Delivery and Paying Agent Agreement/Dealer Agreement] (the “Agreement”), the [Trustee/Delivery and Paying Agent/Dealer] (the “Contractor”) agrees not to discriminate against any employee, City employee working with the Contractor, applicant for employment with the Contractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

(d) *Condition to Contract.* As a condition to this Agreement, the Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to

the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.

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

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

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

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

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

7. *Limitations on Contributions.* Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal

services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in said Section 1.126. The Contractor further agrees to provide to the City the names of each person, entity or committee described above.

8. *Requiring Minimum Compensation for Covered Employees.* The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the Contractor's obligations under the MCO is set forth in this Section. The Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, the Contractor agrees to all of the following:

(a) The MCO requires the Contractor to pay the Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and the Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is the Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the City may pursue any of the remedies set forth in this Section against the Contractor. Nothing in this Section shall be deemed to grant the Contractor the right to subcontract.

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

(c) The Contractor shall maintain employee and payroll records as required by the MCO. If the Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

(d) The City, upon reasonable notice to the Contractor, is authorized to inspect the Contractor's job sites during normal business hours.

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

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

(g) The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

9. *Requiring Health Benefits for Covered Employees.* The Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse).

Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

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

(g) The Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the Agreement.

(h) The Contractor shall keep itself informed of the current requirements of the HCAO.

(i) The Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) The Contractor shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least ten business days to respond.

(k) The Contractor shall allow the City to inspect the Contractor's job sites and have access to the Contractor's employees in order to monitor and determine compliance with HCAO.

(l) The City may conduct random audits of the Contractor to ascertain its compliance with HCAO. The Contractor agrees to cooperate with the City when it conducts such audits.

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

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

11. *Protection of Private Information.* The Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Contractor agrees that any failure of the Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, bring a false

claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

12. *Graffiti Removal.* Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require the Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of the Contractor to comply with this section of this Agreement shall constitute a breach of this Agreement.

13. *Airport Intellectual Property.* Pursuant to Resolution No. 01-0118, adopted by the City on April 18, 2001, the City affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

14. *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code §21.35, any Contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. An underwriter, bank, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs,

including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. An underwriter, subcontractor or consultant will be deemed to have submitted a false claim to the City if the underwriter, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

16. *Assignment.* The Contractor is prohibited from assigning, delegating or transferring this Agreement or any part of it unless such assignment, delegation or transfer is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any contract made in violation of this provision shall confer no rights on any party and shall be null and void.

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

18. *Proprietary or Confidential Information of City.* The Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. The Contractor

agrees that all information disclosed by City to the Contractor shall be held in confidence and used only in the performance of this Agreement. The Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

19. *Earned Income Credit (EIC) Forms.* Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. The Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Trust Agreement becomes effective (unless the Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Contractor of the terms of this Agreement. If, within thirty days after the Contractor receives written notice of such a breach, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Trust Agreement or under applicable law. Any Subcontract entered into by the Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **Exhibit C**

### **RFQ Registration Form**

[Name of your RFQ]

Name of Organization:

Address:

Contact Person:

Phone:

Fax:

Email:

**Exhibit D**

**Disclosures Form**

## Exhibit D: RFQ DISCLOSURES

**Instructions:** *Please respond completely to each question below. If the Respondent<sup>i</sup> is an individual, then the information relative to that individual should be disclosed. If the Respondent is a group or joint venture, then information relative to each member of the group or entities that comprise the joint venture should be disclosed. If the Respondent is a corporation, then the information relative to the corporation should be disclosed.*

1. Has Respondent ever defaulted on a loan or other financial obligation? This includes all affiliate corporations and partnerships in which Respondent is or was a general partner. If so, please describe the circumstances including dates and current status:
2. Are there any prior or pending legal proceedings, actions, convictions or judgments that have been filed against Respondent or its wholly owned subsidiaries, or any prior or pending arbitrations or mediations? If so, provide dates the complaints were filed and the present status of the litigation or the status of the arbitrations or mediations:
3. Are there any prior or pending administrative complaints/hearings against or any debarment or suspensions of or other administrative determinations by any federal, state or local government entity relating to Respondent, against any of Respondent's affiliated corporations or partnerships in which Respondent is a general partner, or other business entity? If so, please describe the circumstances including dates, agency or body conducting the investigation or inquiry and the current status:
4. Has Respondent or its wholly owned subsidiaries ever filed for bankruptcy? Please include dates and jurisdiction of filing, the reason, and current status:
5. Describe any business, property, gifts, loans, investments or other financial relationships Respondent, or its individual principals, corporation, LLC, LLP, affiliated corporations or partnerships in which Respondent is a general partner, may have with any senior staff of the Mayor's Office of Housing and Community Development (MOHCD) or any member of the MOHCD Loan Committee or his/her immediate family which are considered a financial interest as defined by Section 87103 of the Fair Political Practices Act.<sup>ii</sup>

Respondent hereby certifies under penalty of perjury under the laws of the State of California that all information provided in this Disclosure questionnaire is true and correct.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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<sup>i</sup> For the purposes of this RFQ, the term “Respondent” shall mean the respondent to this RFQ regardless of legal form. Thus Respondent applies to individuals, sole proprietorships, joint ventures, unincorporated associations, partnerships, LLCs, LLPs, corporations (whether for profit, nonprofit, California or out of state) and any other entity legally entitled to do business in the State of California.

<sup>ii</sup> In summary Government Code Section 87100 requires any public officials participating in making decisions to refrain from using their official position to influence a governmental decision in which they know or has reason to know they have a financial interest. Section 87103 defines a financial interest as one that has a material, financial effect on the official or a member of their immediate family as follows: business interest – over \$2,000; real property interest – over \$2,000; other source of income within 12 months before the decision – over \$500; gift or intermediary for donor of gift within 12 months - \$250; business entity in which the official is a director, officer, partner, trustee, employee or holds a position of management. See Government Code Section 87103 for the complete definition.

July 20, 2016

LeeAnn Pelham  
Executive Director  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Dear Ms. Pelham,

The purpose of this letter is to respectfully request that the San Francisco Ethics Commission grant me a waiver from one of the City's post-employment restrictions – the one-year restriction on communicating with my former department, set forth in Section 3.234(a)(2) of the City's Campaign and Governmental Conduct Code ("C&GCC").

I am currently the Director of Social Impact Investment in the Mayor's Office, and wish to apply for a position as the Executive Director of the San Francisco Housing Accelerator Fund. The Housing Accelerator Fund is a 501c3 nonprofit organization created by the City to support the City's efforts to finance the construction of affordable housing for San Francisco residents. If I were chosen as the Executive Director of this nonprofit, I would need to communicate with the Mayor's Office on a regular basis to coordinate our strategies in supporting affordable housing – thus requiring a waiver from Section 3.234(a)(2).

I believe that such a waiver is appropriate because there would be no potential for undue influence or unfair advantage here. The City, and the Mayor's Office in particular, recently created the Housing Accelerator Fund to aid its own affordable housing efforts. The Fund would partner with the City on affordable housing projects and given this overlap of interests, there is no reason for the Fund to attempt to gain any special influence or advantage. Allowing me to apply for (and hopefully obtain) the Executive Director position and in that role, communicate with Mayor's Office staff, would only further the purposes that led to the Fund's creation.

**Background on My Role in the Mayor's Office:** I have been employed by the Mayor's Office since September 2013 when I joined the Mayor's Office of Civic Innovation as a Mayor's Senior Fellow. I had previously worked in investment banking for several years in Public Sector & Infrastructure Finance, and wanted to apply the skills and expertise I built in finance and project management to addressing local challenges. During my year as a Senior Fellow, I led the City's exploration of Pay for Success and Social Impact Bonds as a tool to improve outcomes for the City's most in-need residents, and project managed the finance and resources component of the Mayor's Housing Working Group (discussed further below). In September 2014, after securing a grant to support my position from the Irvine Foundation, I decided to remain a permanent employee in the Mayor's Office as the Director of Social Impact Investment. Over this period I have continued my

work on Pay for Success as a tool to better fund positive outcomes for our residents, and building financing tools and public private partnerships to address housing challenges in San Francisco. I have been on family leave from my position in the Mayor's Office since April 1, 2016 and remain on leave currently.

**Background on the SF Housing Accelerator Fund:** The Mayor convened a Housing Working Group in the spring of 2014 which included over one hundred tenant and housing advocates, affordable and market rate developers, realtors and property owners, working with staff from the Mayor's Office and City Departments to develop strategies to enable the City to build and preserve 30,000 units of housing by 2020. The Housing Working Group produced several recommendations<sup>1</sup>, including that the City launch a "Housing Affordability Fund", via public private partnership, to address bottlenecks in affordable housing production and preservation. One of my key responsibilities in 2015 was to act on this recommendation with the creation of the new public private Housing Accelerator Fund. After the Mayor announced the creation of the Housing Accelerator Fund in his State of the City in January of 2015, I worked closely with the Mayor's Office of Housing and Community Development (MOHCD), Mayor's Office of Economic and Workforce Development (MOEWD), Mayor's Director of Strategic Partnerships, and outside consultants to transform an existing City-sponsored 501c3, the Public Initiatives Development Corporation, into the independent Housing Accelerator Fund (the "Fund"). The Fund is designed to work in lockstep with the City's housing policy goals, and provides the City with powerful new tools for producing additional affordable housing. It incorporates elements from successful funds elsewhere into the context of a non-profit fund, chartered as a 501c3, with a flexible balance sheet mandate to support housing and economic development initiatives important to the City. After the concept of a non-profit fund was developed in the Mayor's Housing Working Group, my team undertook extensive outreach to San Francisco's affordable and mission-driven housing developer community to identify ways in which additional affordable housing production could be generated. Two key problems preventing additional affordable housing from being produced were identified:

1. Existing capital for affordable housing development is already programmed. For additional affordable housing to be produced, additional capital is needed.
2. Desirable sites for affordable housing are often lost when developers cannot acquire them quickly enough. Building sites and existing occupied properties may be difficult to acquire quickly due to challenges assembling financing and/or identifying available space in the City's pipeline for affordable housing.

The Fund has been designed to alleviate both of these problems. By assembling new capital within the framework of a non-profit aligned with City policy, the Fund will

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<sup>1</sup> Mayor's 2014 Housing Working Group Findings & Recommendations:  
<http://sfmayor.org/modules/showdocument.aspx?documentid=431>

expand the pool of City pipeline-coordinated resources available for affordable housing development. The Fund will also have the flexibility to intervene rapidly in order to facilitate the acquisition of strategic sites. In sum, the Housing Accelerator Fund is a non-profit created by the City entirely for the purpose of furthering the City's own policy goals--there is complete mission alignment between the Fund and the City.

The City has committed \$10 million in seed funding to the Fund's balance sheet, and the Fund's team is working to raise an additional \$10 million in philanthropic investment and an initial \$20-30 million in Community Reinvestment Act ("CRA") bank capital. Much of this capital has already been committed. Over 2015, we also raised over \$550,000 in start-up grant funding to cover all of the operational and start-up costs of the Fund.

**The Fund's Alignment with City Policy and Required Independence:** The Fund was created to be in alignment with and provide a complementary set of financial tools to the City, further evidenced by the Director of Public Finance and MOHCD's seat on the Fund's Board. Over the next several months, the Fund will apply to become a Community Development Financial Institution ("CDFI"), a designation granted by the US Department of Treasury to non-municipal nonprofit organizations, which will provide the Fund with greater access to low-cost funds to support the City's affordable housing pipeline. Prior to submitting a competitive application, the Fund's Board and the City would like to hire an Executive Director to lead the Fund's efforts going forward.

**Housing Accelerator Fund Executive Director Role:**

The Fund will be staffed initially with an Executive Director and a set of consultants already procured by the Fund. The consultants include legal and financial support. The Fund's business plan includes the additional hiring next year of a Vice President and an administrative staff, contingent on the Fund's growth and capacity needs. The Director will be responsible for coordinating all day-to-day operations of the Fund as well as managing its growth, fundraising, all coordination with the Board (including City members), and overseeing consultants. These responsibilities include outreach to developers, overseeing lending, all responsibilities related to CDFI Fund administration, and close coordination with the MOHCD regarding project lending, product development and subsidy allocation. Internal City staff will be a key source of pipeline transactions, market intelligence, and ideas for new products and other initiatives that could be implemented by the Fund.

Given that much of the Fund's activity will be ultimately be financed in coordination with the City, it will be essential that this Director communicate regularly with the Mayor's Office of Housing and Community Development staff and have prior knowledge of City programs and policies in addition to expertise in fund administration, in order to effectively achieve the City's mission in the creation of more affordable units.

For these reasons, I would need the requested Post Employment waiver before I formally apply for the Executive Director position with the Fund. The Board just launched its search for a Director with the goal of identifying the candidate by September (Executive Director job posting attached). One of the Fund's philanthropic investors has requested that the Director be identified prior to disbursing their full investment in the Fund, and the Director will need to be on staff prior to the Fund applying for CDFI status.

**Rationale for the Waiver:**

For the following reasons, a waiver from the Section 3.234(a)(2) would not create any potential for undue influence or unfair advantage.

- 1) *Alignment of mission:* The HAF was created by the City in order to further the City's affordable housing mission with a broader pool of funding. Given the alignment of mission and the nonprofit nature of the Fund, there also should not be any avenue for undue influence or unfair advantage created through my having worked with the Mayor's Office and then serving as Director of the nonprofit. Any communications between the Director and MOHCD will be to further the City's housing policy goals and strategies, not to create any advantage for the Director or any private parties. The Fund exists as an extension of the City's affordable housing toolkit.
- 2) *My communications with the Mayor's Office:* If I am offered the role as Director of the Fund, I would have substantial communication with the Mayor's Office but due to the alignment of missions, those communications would be in the context of a partnership. While I played an instrumental role in the development of the Fund over the course of 2015, any "inside knowledge" I would have would only assist this close relationship between the City and the Fund. It would only make me a more effective leader for the Fund, and allow the Fund to move forward with its work immediately.
- 3) *Future of the Fund:* The future success of the Fund will require a Director who both understands the City's processes in housing development and is trusted by City staff, and with deep background and expertise in public private partnerships and financing. I believe I am uniquely fit to meet these requirements and to lead the Fund to achieve the City's purpose in its creation.
- 4) *Non-Profit:* The Fund is structured as a 501c3 non-profit corporation under California state law. There is no individual monetary benefit to shareholders, partners or otherwise. Further as a potential CDFI, the Fund will be subject to US Treasury's ethics and mission regulations governing CDFIs<sup>2</sup>, which clearly align with the City's housing goals.

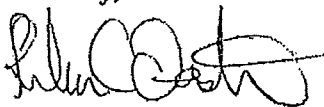
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<sup>2</sup> As a CDFI, the Fund will additionally be governed by the US Treasury's ethics regulations under 12 CFR Part 1805, Subpart H. These regulations prohibit any CDFI insider (including any CDFI staff member) from accepting favors, gratuities, favors or anything of monetary value from any actual or potential borrower's, owners, or contractors for such credit.

The Fund is a key component of the City's toolkit towards addressing the inequity in housing markets and provides the City a unique ability to tap into the private markets, bring more capital to the affordable housing markets, develop more housing, more quickly, all while coordinated with MOHCD, the City and its policy objectives. The Fund, and therefore, the City will benefit greatly from having someone experienced in both the private sector and the City itself in the role of Executive Director.

Thank you for your consideration and I welcome the opportunity to answer any further questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca Center Foster', with a stylized, cursive script.

Rebecca Center Foster

CC: Steve Kawa, Mayor's Chief of Staff; Kate Howard, Mayor's Budget Director; Melissa Howard Whitehouse, Mayor's Deputy Budget Director; Olson Lee, Director of the Mayor's Office of Housing and Community Development and Housing Accelerator Fund Board Officer; Kate Hartley, Deputy Director of the Mayor's Office of Housing and Community Development; Nadia Sesay, Director of Public Finance and Housing Accelerator Fund Board Officer



## **SAN FRANCISCO HOUSING ACCELERATOR FUND EXECUTIVE DIRECTOR POSITION**

Contact: [info@forsythstreet.com](mailto:info@forsythstreet.com)

### **THE ORGANIZATION**

The San Francisco Housing Accelerator Fund (the HAF) is a newly established financial intermediary focused on the San Francisco market. An independent 501(c)3 not-for-profit corporation established by the City of San Francisco and designed to complement City housing policy, the HAF is seeking to hire its inaugural Executive Director.

The HAF's purpose is to expand and accelerate the production of affordable housing in the City by providing specialized financial products to for-profit and not-for-profit developers of affordable housing. The HAF is in the process of closing on its initial capitalization, including senior debt from major financial institutions and program related investments from leading foundations, and anticipates launching its initial lending activities in the fall of 2016. The corporation expects to establish an initial balance sheet of \$50 million, by the end of 2016, increasing over time.

The HAF will begin operations with limited staff, using external advisors and consultants for operational efficiency. The team will be expected to close three loans in the initial six months of operation in order to qualify the corporation for additional capital resources.

### **THE POSITION**

The Executive Director will be responsible for leading all of the corporation's operations, including but not limited to: reporting to and working with the corporation's Board of Directors to formulate and implement HAF's strategic direction, policies, and procedures; maintaining coordination with City housing policy; communicating regularly with staff at the Mayor's Office of Housing and Community Development; conducting outreach to real estate developers; continually updating existing products and developing new products to maintain the corporation's responsiveness to market needs; capital raising including managing capital relationships; underwriting potential loans or investments; and managing the corporation's finances. The Executive Director will be the public face of the HAF and will be expected to visibly position the corporation within the San Francisco housing market.

Initially, the Executive Director will be the HAF's only staff person. The HAF has hired external consultants and advisors to provide financial advisory, underwriting, accounting, audit, legal, and other services. A responsibility of the Executive Director will be to supervise the HAF's third-party service providers.

### **QUALIFICATIONS**

- Seven (7) years experience in housing finance, lending and investment, banking, or other relevant field.
- Five (5) years supervisory experience in substantive positions requiring the ability to formulate and implement policy and work with diverse partners.
- Bachelor's degree or equivalent experience. Graduate degree in a relevant subject (e.g., real estate, business, urban planning, or public policy) is a plus.

- Experience and knowledge of San Francisco housing programs and regulatory requirements and the San Francisco multifamily rental housing market.
- Experience and knowledge of state and federal housing programs and regulatory requirements, including community development financial institutions, is a plus.
- Experience with pro formas, origination, product development, capital planning, portfolio planning, project refinancing and recapitalization, balance sheet management, fund management and complex financing structures.
- Established track record in building effective collaborations.
- The ability to manage diverse public and private stakeholders in an effort to successfully implement the HAF's mission.

**SALARY AND BENEFITS**

Commensurate with experience.

**CONTACT**

Interested candidates should submit a cover letter and their resume to [info@forsythstreet.com](mailto:info@forsythstreet.com) by August 12, 2016.

September 22, 2016

LeeAnn Pelham, Executive Director

Jessica Blome, Deputy Director

San Francisco Ethics Commission

Dear Ms. Pelham and Ms. Blome:

I would like to withdraw my request for a waiver of the post-employment communications ban related to potentially serving as the Executive Director of the Housing Accelerator Fund. After our further discussions, such a waiver is no longer necessary because during the first 12 months of my potential tenure as Director of the Fund, should I be hired into the role, the nature of the job would not involve any communications in which I would intend to influence the Mayor's office. Communications would be focused on execution and organizational set-up, information gathering, and Board-related communication with Mayor's office employees in their capacity as members of the Board of Directors and Credit Committee of the Fund. Instead of seeking a waiver of the post-employment communications ban, I would like to request the issuance of advice related to my potential communications with the Mayor's office during the 12 months post termination, should I become Director of the Housing Accelerator Fund.

Over the first 12 months serving as Director of the Fund, my communication with the Mayor's Office would potentially include the following:

- **Discussions regarding the execution of administrative items related to the establishment of the Housing Accelerator Fund as a stand-alone 501c3 organization.** The 501c3 which is becoming the Housing Accelerator Fund is currently a "government supported" 501c3. It was established by the City several years ago as a non-profit controlled by the City created to support affordable housing development. In order for it to become a Community Development Financial Institution designated by the US Treasury, it will over the next several months need to become an independent 501c3. MOHCD staff have been handling the administrative items related to this transition, and the Director would need to communicate with the MOHCD staff who oversaw the 501c3 as a supported entity of the City about these administrative items. This communication would be information gathering and implementation-related, without any intent or avenue for the Director to influence MOHCD.
- **Information gathering regarding MOHCD's programs and pipeline for the purpose of coordination of the Accelerator Fund's program and lending;** and discussion with MOHCD staff regarding general underwriting terms of Accelerator Fund loans and consistency with MOHCD guidelines. MOHCD currently runs a "Small Sites" program focused on financing smaller affordable housing projects. The Fund would be taking over some of this program's financing from MOHCD, and the Director will need to gather information from MOHCD staff involved in the Small Sites program about their processes and requirements for the program. The Director would not intend to influence MOHCD staff through these discussions, as the program and pipeline are already established.

- **Participation together in meetings/conference calls related to the execution of the Accelerator Fund business and external fundraising plan as developed by the Mayor's Office.** The Mayor's office and the Fund's consultant have led the philanthropic and bank related fundraising efforts for the Fund to date. This has included discussions with several foundations and banks regarding their commitments of capital to the Fund. Over the first 12 months in the role, the Director would take over the lead role in external fundraising efforts for the Fund, but those discussions and commitments already in process would continue to involve Mayor's Office staff. The City has committed \$10 million in seed capital to the Fund, which will have been transferred to the Fund prior to the Director's role being filled. The Fund will not seek any additional capital from the City. The Fund has also already secured commitments for philanthropic funding in the form of grants and loans of over \$6 million and is in advanced conversations regarding additional loans from foundations. Additionally, the Mayor's office staff and Fund consultants forming the Fund have begun conversations with banks that lend to affordable housing projects about providing low cost loans to the Fund or its projects. These banks are motivated by the Community Reinvestment Act to provide low cost capital to affordable housing projects and based on the Fund's business plan for its first year would provide another \$20-30 million in loans to the Fund. Meetings with banks regarding this initial fundraising could include both the Director and Mayor's office staff. The Director would not be in any position to influence Mayor's office staff in these meetings.
- **Communication with MOHCD employees in their capacity as Board or Credit Committee Members (or their representatives) of the Housing Accelerator Fund.** The Board structure for the Fund, as outlined in its bylaws, includes The Director of MOHCD as an ex-officio member. The Credit Committee of the Fund includes either the Director of MOHCD or their representative. The Credit Committee will meet on an as-needed basis to approve loan commitments of the Fund. The Fund does not yet have any loans outstanding. Once it is fully established organizationally and has completed raising the external capital as planned, it will seek to provide loans to affordable housing projects. The Fund Director and consultants will complete diligence and outline the creditworthiness of the proposed transactions for the Credit Committee, and the Credit Committee will determine if the loans should be funded. The Director's role in conversations with MOHCD staff as part of the Credit Committee review would be to receive confirmation that the loan proposed meets MOHCD's underwriting requirements, and any other information gathering regarding MOHCD's views on the project as it relates to their programs and pipeline.

I would also like clarification that my post-employment communications ban with the restrictions outlined includes the Mayor's Office and the Mayor's Office of Housing and Community Development (MOHCD), but does not include the Office of Economic and Workforce Development or other City Departments not within the Mayor's Office such as the Planning Department.

Thanks in advance for your timely consideration of this request.

Sincerely,

Rebecca Foster