

CITY OF SAN MATEO
AGREEMENT TO PROVIDE FUNDS
TO THE HOUSING ENDOWMENT AND REGIONAL TRUST OF SAN MATEO COUNTY
FOR THE LOCAL HOUSING TRUST FUND PROGRAM

THIS AGREEMENT is made and entered into on this ___ day of _____ 2020, by and between the CITY OF SAN MATEO, hereinafter referred to as City, and the Housing Endowment and Regional Trust of San Mateo County, hereinafter referred to as HEART. City and HEART are sometimes referred to herein as the “Parties.”

WHEREAS, the California Department of Housing and Community Development (“HCD”) is authorized under the Local Housing Trust Fund (“LHTF”) Program from the Veterans and Affordable Housing Bond Act of 2018 (Proposition 1) (as described in Health and Safety Code section 50842.2 et seq. (Chapter 365, Statutes of 2017 (SB 3)) (“Program”) to provide up to \$57 million in matching grants (“Program Funds”); and

WHEREAS, HCD, through the LHTF Program, will provide Program Funds on a dollar for dollar basis to eligible applicants for eligible activities; and

WHEREAS, HCD issued a Notice of Funding Availability (“NOFA”) dated April 30, 2020 under the LHTF Program; and

WHEREAS, Program Funds awarded under this NOFA shall be used to provide construction loans and/or permanent financing loans to pay for construction or rehabilitation of Affordable rental housing projects, Emergency Shelters, Permanent Supportive Housing, Transitional Housing and Affordable homebuyer/homeowner projects. Program Funds may also be used to assist income-eligible first-time homebuyers to purchase homes, and to rehabilitate houses owned by income-eligible occupants, as well as to construct, convert, reconstruct, rehabilitate and/or repair Accessory Dwelling Units (“ADUs”) or Junior Accessory Dwelling Units (“JADUs”);

WHEREAS, City wishes to support the development of affordable housing for low-income residents in the City of San Mateo; and

WHEREAS, HEART is an eligible Regional Housing Trust Fund applying to the Program to administer one or more eligible activities using Program Funds; and

WHEREAS, City is a member agency of HEART and makes an annual financial contribution to HEART to support the its efforts to create affordable housing.

NOW, THEREFORE, to achieve these common goals in the community, the Parties agree as follows:

1. **HEART:** HEART is a Regional Housing Trust Fund, a nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code, and a Joint Powers Authority (“JPA”) formed and existing under the laws of the State of California, of which the City is a member. HEART is an eligible applicant under the LHTF Program and is willing to and capable of performing the terms and services described herein.

2. **PURPOSE:** City wishes to provide Two Million Dollars (\$2,000,000) to HEART to act as a matching funds source for the LHTF Program. HEART has completed a first phase funding process for affordable multifamily rental housing projects and announced on its website that the development of 400 East 5th Avenue in the City of San Mateo (“Project”) is approved to submit a final application in the amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) (City grant amount plus LHTF matching amount minus 5% of total, which HEART will retain as an administrative fee) upon HCD’s award of LHTF Program Funds to HEART. Based on its review, HEART will provide funding to the Project in the form of a deferred, 55-year low-interest loan secured by a promissory note and a deed of trust naming HEART as the sole beneficiary for the entire amount of the loan. The Project is an eligible activity under the LHTF Program and HEART shall include the Project and funding in the amount of \$3.8 million in its application. By including the Project in its application, HCD will award points to HEART based on the Project and the amount of proposed funding. HEART is compelled to fund the Project in the proposed amount and failure to do so may result in a reduction in point and/or the forfeiting of LHTF Program Funds.
3. **FUNDING:** The source of City funds (“City Funds”) is Commercial Linkage Fees and shall in no event exceed \$2 million dollars. City Funds shall be used for the sole purpose of serving as matching funds for the LHTF Program. City Funds shall be used for lawful purposes only.

If HEART is awarded the LHTF Program funds in the amount of \$2 million dollars, City Funds shall be placed on deposit by City and held until requested by HEART for the purpose of drawing the LHTF Program Funds granted by HCD for the Project. In the manner prescribed by City, HEART shall provide a written notice to remit City Funds. The request shall specify that the City Funds requested shall be use for the purposed specified herein and shall be accompanied by such supporting and substantiating documentation as City may reasonably request. City shall provide funds to HEART within ten (10) days of written request. HEART shall maintain records related to expenditure of the funds for five (5) years.

City expressly warrants and represents that City Funds shall be made available to HEART if HEART is awarded LHTF Program funds in the amount of \$2 million dollars and upon written notice as provided in this Section, and that City’s failure to make such funds available to HEART shall constitute a material breach of this Agreement and shall entitle HEART to any legal, contractual, and/or equitable remedies related thereto.

4. **AGREEMENT TERM:** This agreement shall commence on _____, 2020 and shall terminate on _____, 2025. The Parties may agree in writing to extend the Agreement Term.
5. **HEART’S FISCAL AND OTHER RESPONSIBILITIES:** HEART shall:
 - A. Comply with the HCD Guidelines establishing the terms, conditions, and procedures for grants from the LHTF Program and for funds awarded under the LHTF Program. These Guidelines implement, interpret, and make specific Health and Safety Code (“HSC”) Sections 50842.1, 50842.2, 50843.5 and Section 54006(f), which govern the LHTF Program.
 - B. Establish and maintain a written system of accounts for budgeted funds that shall be in conformance with generally accepted principles of accounting. Such system of accounts shall be subject to review, approval and inspection by City.

- C. Document all costs by maintaining complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, bank statements and/or other official documentation evidencing in proper detail the nature and propriety of all transactions.
- D. Independent Audits: HEART must perform an independent fiscal audit once a year, in conformance with the generally accepted standard accounting principles. Such audits must identify the total funds received and disbursed as well as funds granted and expended. The costs for such audits shall be at HEART's expense, unless otherwise provided for in this Agreement. HEART's Board of Directors must provide copies of the completed audits to City within thirty (30) days of their completion and acceptance by HEART's Board of Directors.
- E. All services and actions to be performed by HEART in connection with the Project shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations.

6. RECORDS, REPORTS AND AUDITS OF HEART:

- A. Establishment and Maintenance of Records: HEART shall maintain records, including but not limited to books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly: (1) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement; and (2) all other matters covered by this Agreement.
- B. Preservation of Records: HEART shall reserve and make available its records:
 - 1) Until the expiration of five (5) years from the date of the submission of the annual financial status report.
 - 2) For such longer period, if any, as is required by applicable law; or
 - 3) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement.
- C. Program Report: At City's request, HEART shall provide Program Reports to City detailing progress made toward the provision of services.

- 7. TERMINATION:** City reserves the right to terminate this Agreement if, after thirty (30) days written notice and a reasonable opportunity to cure during that thirty-day notice period, HEART fails to comply with the terms of this Agreement.

If HCD does not award LHTF Program Funds to HEART, this Agreement shall terminate upon notification of both the Parties to this Agreement and no City funds, including both the City's matching fund amount or HEART's administrative fee, will be due to HEART. This Agreement shall not terminate, and City shall not have the right to terminate this Agreement if LHTF Program Funds are awarded by HCD to HEART. City expressly warrants and represents that City Funds shall be made available to HEART upon written notice as provided in Section 3, and that City's failure to make such funds available to HEART shall constitute a material breach of this Agreement and shall entitle HEART to any legal, contractual, and/or equitable remedies related thereto.

8. **RELATIONSHIP OF PARTIES:** Notwithstanding any publicity or other references to the City required to be made in connection with the Project, HEART understands and agrees that the Project performed under this Agreement is not performed by HEART as an independent contractor of City or as an employee of City, and that neither HEART nor its employees acquire any of the rights, privileges, powers, or advantages of City contractors or City employees. HEART acknowledges and agrees that it is not, and will not hold itself out as, an agent, partner, or co-venturer of City, and that this Agreement is not intended and does not create an agency, partnership, joint venture between the Parties to this Agreement.
9. **INTEREST OF PUBLIC OFFICIALS:** No members, officers, employees or agents of City, shall have any interest, direct or indirect, in this Agreement or a related subcontract.
10. **INSPECTION OF PROGRAM:** It is understood that periodic review of HEART's program may be necessary under procedures set forth in City's Performance Monitoring Procedures.
11. **PROGRAM INCOME:** Organization shall record program income as part of the financial transactions of the program. Organization agrees that program income shall only be used in performing services and activities specified in the LHTF grant agreement between HCD and HEART. For fifty percent (50%) of any program income, including interest and principal, HEART shall give funding priority to affordable housing projects located within City's jurisdictional boundaries.
12. **REVERSION OF ASSETS:** If HEART is dissolved or ceases to exist, any City funds held by HEART at the time of its dissolution shall be accounted for pursuant to Section 6.B of this Agreement, and shall be immediately returned to City. HEART shall comply with any reversion of assets imposed by HCD as a condition of receiving LHTF Program Funds. To the extent allowed by HCD, any notes, deeds of trust, regulatory agreements or agreements in connection with the Project and secured by real property shall name City as successor in interest upon the dissolution of HEART. City as successor to HEART for the Project Loan shall comply with all HCD regulations, including repayment of LHTF grant funds to HCD and enforcement of affordability covenants.
13. **ASSIGNABILITY:** HEART shall not assign this Agreement, and shall not transfer any interest in this Agreement, without City's prior written consent.
14. **MEDIATION:** Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The Parties shall meet in mediation within thirty (30) days of a request for mediation. The mediator shall be agreed to by the mediating Parties; in the absence of an agreement, the Parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the Parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the Parties but not more than sixty (60) days, unless the maximum time is extended by the Parties.

15. **HOLD HARMLESS:** HEART agrees to hold harmless, defend, and indemnify City, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability,

damage, and expense arising out of HEART's performance or nonperformance of this Agreement, except where such claims, loss, liability, damage, and expense arose from negligence or willful misconduct attributable to City.

If HCD awards LHTF Program Funds to HEART, City agrees to hold harmless, defend, and indemnify HEART for any claims, loss, liability, damage, and expense arising out of any failure by City to make City Funds available to HEART as required by this Agreement.

16. INSURANCE: HEART shall procure and maintain for the duration of this Agreement the insurance as specified below:

A. Coverage shall be at least as broad as:

- 1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Organization has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- 2) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If HEART maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by HEART.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1) Additional Insured Status: **City, its elected and appointed officials, employees, and agents are to be covered as insureds** on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of HEART; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of HEART including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to HEART's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
- 2) Primary Coverage: For any claims related to this contract, HEART's insurance coverage shall be primary insurance as respects City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by City, its elected and appointed officials, employees, or agents shall be excess of HEART's insurance and shall not contribute with it.
- 3) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to City.

- 4) Waiver of Subrogation: Organization hereby grants to City a waiver of any right to subrogation which any insurer of said Organization may acquire against the City by virtue of the payment of any loss under such insurance. Organization agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.
- 5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by City. City may require HEART to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- 6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.
- 7) Verification of Coverage: HEART shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. Failure to obtain the required documents prior to the work beginning, however, shall not waive HEART's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

17. NONDISCRIMINATION:

- A. General: No person shall, on the grounds of race, color, national origin, religious affiliation or non-affiliation, marital status, medical condition, sex, age, disability status, sexual orientation or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination or harassment under this agreement.
- B. Employment: Organization shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this agreement. Organization's personnel policies shall be made available to the City upon request.

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

19. GOVERNING LAW AND VENUE: The validity of this Agreement and of its terms, the rights and duties of the Parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement

shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued in the San Mateo County Superior Court.

- 20. PROJECT REPRESENTATION:** Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

CITY: Sandra Council
Housing Manager
City of San Mateo
330 W. 20th Avenue
San Mateo, Ca 94403

ORGANIZATION: Armando F. Sanchez
Executive Director
Housing Endowment and Regional Trust of San Mateo County
2905 S. El Camino Real
San Mateo, CA 94403

- 21. ELECTRONIC SIGNATURE:** If both City and HEART wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For City: ☐ If this box is checked by City, City consents to the use of electronic signatures in relation to this Agreement.

For HEART: ☐ If this box is checked by HEART, HEART consents to the use of electronic signatures in relation to this Agreement.

This agreement has been duly executed by the following parties:

HEART:

HOUSING ENDOWMENT AND REGIONAL
TRUST OF SAN MATEO COUNTY

CITY OF CITY OF SAN MATEO
a municipal corporation

By: _____
Armando F. Sanchez, Executive Director

By: _____
Drew Corbett, City Manager

Date: _____

Date: _____