

ATTACHMENT 4

PUBLIC BENEFIT AGREEMENT-- DISCUSSION OF ISSUES:

- A. Financial Risk to City**
 - 1. Definition of “Indenture” – Paydown of Bond Principal
 - 2. Infrastructure Fee (City CFD special tax) - \$275,693 (2022) with annual CPI increase
 - 3. City Monitoring Fee - starts at \$37,100/year and increases by 2%
 - 4. Project Refinancing
- B. Purchase Option**
 - 1. Terms of Conveyance
 - 2. Property Needs Assessment
- C. Legal Risk to City**
 - 1. Indemnification
 - 2. Defaults and Remedies
- D. Affordability**
 - 1. Inconsistent Provisions
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A. Financial Risk to City

The following provisions in I.A. to be added to the Indenture and referenced in the Public Benefit Agreement (PBA) to ensure compliance:

1. Definition of “Indenture” – Paydown of Bond Principal (Section 2(f))

“Indenture” – the Trust Indenture between Owner, as issuer, and Bond Trustee, as trustee, pursuant to which the Bonds were issued, with reference to Owner’s payment of the Host Fee and ~~Community Facilities District special tax~~Infrastructure Fee; and provide that principal payment for all Bonds shall be paid in parity or at same priority level as bond interest payments, and that Owner shall pay at least twenty-five percent (25%) of all Bond principal within 10 years of Bond issuance; and Host shall receive timely notification of any changes to management, financial changes, or other significant matters.

Aligns with Proposed GOAL J, City Financial Risk/Bond Structure:

Financial plan and bond structure are sound and consistent with industry standards for multi-family revenue bonds to reduce City risks and liability.

City Risk, if deleted:

- a. *Per bond analysis, only about 6.9% (\$21 million) of the \$303 million bond principal would be paid down by Year 15.*
- b. *With outstanding principal of about \$282 million, it will be difficult to fully cover debt and other expenses if City chooses to exercise purchase option at Year 15.*
- c. *If timely notification of significant changes is not provided, City will not be well positioned to address any tenant or community concerns.*

2. Infrastructure Fee (City CFD special tax) - \$275,693 (2022) with annual CPI increase (Section 14 (m))

~~Community Facilities District Special Taxes.~~i. If the City 20082008-1 CFD (“CFD”) special tax is still being collected on other properties within the boundaries of the CFD but the Property is exempt from the CFD obligation to pay such, or for any other reason that the special tax is not collected, then the Owner will make in-lieu payment in the same amounts, at the same times and to the same party as would be required if the Property was not exempt, provided that the Owner shall have any right to prepay its obligation to the CFD and other rights of owners of properties within the boundaries of the CFD. an annual in-lieu Infrastructure Fee payment to the Host by June 1.

ii. The Indenture shall provide that the Owner, or Bond Trustee on its behalf, shall pay to Host on each anniversary of the date hereof, commencing with the first anniversary and terminating upon Conveyance an annual Infrastructure Fee of \$275,693 with annual increase based on the year-over year change as of December of the prior year based upon the CPI for San Francisco All Urban Consumers Index, the CPI San Francisco All Urban Wage Earners and Clerical Worker's Index (“Infrastructure Fee”); provided, however, that such fee shall be payable as an Operating Expense solely from revenues of the Project available therefor under and in accordance with the Indenture and to the extent permitted by law.

iii. In accordance with the Indenture, the annual Infrastructure Fee shall be paid first before any other Operating Expenses are paid and shall be paid to Host before any annual payments

of any kind to Owner and Project Administrator are made and shall accrue to Host and be paid from future years Operating Revenue if insufficient Operating Revenue is available to meet this obligation at any time during the term of the Public Benefit Agreement until Conveyance.

Aligns with Proposed GOAL H, City Revenue:

No loss of City property taxes, including CFD 2008-1 special tax.

City Risk, if deleted: City may lose approximately \$275,000 annually and increases by minimum of 2% (\$13.8M over 35 years) if the JPA becomes exempt from paying CFD special tax in the future. Without this provision in the PBA and Indenture, City will not be assured of City receiving this revenue.

3. Additional Indenture Provisions - Monitoring Fee - starts at \$37,100/year and increases by 2% (Section 14(r)(ii))

Owner or Project Administrator will submit to the Host an annual monitoring fee of \$100 per unit or \$37,100 for 2023 to cover City staff costs for project oversight and monitoring with an annual increase of two percent (2.00%) (“Monitoring Fee”). The annual Monitoring Fee shall be paid to Host before any annual payments of any kind to Owner and Project Administrator are made and shall accrue to Host and be paid from future years Operating Revenue if insufficient Operating Revenue is available to meet this obligation at any time during the term of the Public Benefit Agreement until Conveyance.

Aligns with Proposed GOAL N, Monitoring and Reporting:

Fee to cover ongoing City administrative costs for project oversight and monitoring.

City Risk, if deleted

Staffing costs to review annual reports and provide updates to Council will be borne by the City’s General Fund.

4. Additional Indenture Provisions: Project Refinancing (Section 14(r)(i))

In the event of a refinancing of the Owner’s acquisition of the Project prior to the Sale Right Exercise Date, neither the Owner nor the Project Administrator shall be paid any fee or other compensation in connection with such refinancing other than customary reasonable expenses relating to the transaction. The Owner shall not refinance the Bonds, without the prior written consent of the City, which consent shall not be unreasonably withheld, except that such consent shall not be required for a refinancing that neither increases the amount of debt or extends the maturity of such debt. Except for refinancing authorized in the preceding sentence, the Owner shall not incur any additional debt on the Property, without the prior written consent of Host which consent shall not be unreasonably withheld, unless the Owner provides evidence to the Host that the Extraordinary Expense Fund or other Project capital reserve funds are depleted or near depletion and that the new debt is used to fund improvements at the Property. Under no circumstances shall the Owner incur additional debt or encumbrances for a “cash out,” payment to Owner, Program Administrator, or Project Manager.

Aligns with Proposed GOAL K, Refinancing/Additional Debt:

City authority to approve any refinancing, restructuring, or issuance of additional debt.

City Risk, if deleted:

While revised language requires City consent for refinancing or adding debt, added amendment further protects City by preventing Project from adding debt for capital improvement before first depleting or nearly depleting capital reserve funds.

B. Purchase Option

1. **Terms of Conveyance** (Section 7(b))

The Property will be conveyed to Purchaser in ~~AS IS CONDITION, WITH ALL FAULTS, and without representations or warranties of any kind or nature as to the condition of the Property, good and clean order, except for ordinary wear and tear, with all capital improvements completed as recommended in Section 14(o) below.~~

Aligns with Proposed GOAL L, Capital Improvements:

Capital improvement needs are fully identified and funded for entire bond period.

City Risk, if deleted:

If property is transferred to the City in “as is” condition, City may need to invest significant funds for capital improvements and deferred maintenance and repairs. This can affect future market value and purchase price of property and City’s net proceeds at conveyance. capital needs of the Project

2. **Property Needs Assessment** (Section 14(o))

The Property was evaluated by a Property Needs Assessment dated October 7, 2021. Commencing in January 2026, and on every five-year anniversary thereafter, Owner shall provide Host with a Property Needs Assessment conducted by an independent consultant selected by the Project Administrator ~~assessing with approval of the Host to assess the capital needs of the Project over the subsequent five years and the sufficiency of reserve funds and operating income to fund capital costs for the remaining bond term. Reserve funds shall be adjusted as necessary to fully cover revised capital needs based on the Property Needs Assessment.~~

Aligns with Proposed GOAL L, Capital Improvements:

Capital Needs Assessment prepared at least every ten years and sufficiency of capital reserve funds confirmed.

City Risk, if deleted:

- a. Although frequent assessments are beneficial, the City will have no assurance of adequate funds and improvements to address assessment findings and may receive a property with significant capital improvement needs.
- b. Without City approval of independent consultant, no assurance of an impartial capital needs assessments.

C. Legal Risk to City

1. **Indemnification** (Section 14(t))

- i. Host shall have the same indemnification status as an Owner Indemnified Person and this shall extend to each of Host's officers, governing members, directors, officials, employees, attorneys, agents, and members.
- ii. Owner shall defend (with counsel reasonably acceptable to Host) Host against any claim or action by any party challenging Host's involvement in this Project and any of the agreements related to this Project.

Aligns with Proposed GOAL I, City Financial Risk/Bond Structure:
Protection and reduction of City risk and liability.

City Risk, if deleted:

- a. *City will not be protected against legal challenges and potential liability in the same manner as other parties.*
- b. *Although the City is not party to the bonds, as the Host participant in the PBA, City may still be named in any action challenging the bond issuance or program implementation.*
- c. *Additional insured provision is a good addition but does not adequately address necessary Indemnification protection for the City.*

2. **Defaults and Remedies** (Section 14(u))

Default. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within 30 days after receipt of notice from the other party, constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not initiate proceedings against the party in default until 30 days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Remedies.

- a. Any uncured violation of this Agreement by Owner and Project Administrator shall cause all annual payments of any kind to Owner and Project Administrator to be suspended until compliance with this Agreement is achieved during the term of the Public Benefit Agreement until Conveyance.
- b. Host may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to: (i) Actions for monetary damages; and (ii) Actions for injunctive relief.

Aligns with Proposed GOAL I, City Financial Risk/Bond Structure, and GOAL M, City Enforcement Authority: Protection and reduction of City risk and liability. City oversight of management of Project.

City risk, if deleted:

- a. *City would not be protected against legal challenges and potential liability in the same manner as other parties.*

- b. Without these provision in the both the PBA and Regulatory Agreement, City does not have a recourse to address non-compliance.

D. Affordability

The following provisions in II.A. to be added to the Regulatory Agreement and referenced in the PBA to assure compliance:

1. Inconsistent Provisions (Section 10)

In the event of any inconsistency between the terms of this Agreement and the Regulatory Agreement, the Regulatory Agreement shall prevail. Owner agrees to not amend Sections 4 or 5 of the Regulatory Agreement, [attached hereto and incorporated herein by reference as Exhibit B](#), without the Host's prior written consent, ~~which consent shall not be unreasonably withheld.~~

Aligns with Proposed GOAL A, Affordability:

Project will primarily serve moderate-income households

City Risk, if deleted:

Without this added amendment pertaining to the affordability covenants, City will have no authority over the affordability terms for the Project since City is not a party to the Regulatory Agreement.

2. Rent Reductions (Section 14(s))

[The Regulatory Agreement shall reflect rent reduction for existing Project qualifying tenants: 18% reduction from current rents for low-income households; 12% reduction from current rents for median income households; and 10% reduction from current rents for moderate-income households.](#)

Aligns with Proposed GOAL C, Existing Tenants:

Qualified existing tenants will benefit from a rent reduction of at least 10%.

Potential Impact, if deleted:

- a. *Key provision offered by applicant in initial proposal, but latest representation is that this provision cannot be contained in PBA or Regulatory Agreement.*
- b. *Without reference to rent reduction for existing tenants in PBA, City will have no ability to ensure this benefit for existing middle-income residents.*