



CONTRACT/AGREEMENT APPROVAL FORM

Date:
Name of Contract/Agreement
Originating Department/Responsible Person, ext.
Vendor
Routing Instructions:

8/30/18
Exclusive Negotiating Rights Agreement with SSF PUC Ho
ECD / *M. R. Lappen*
SSF PUC Housing Partners LLC
City Attorney, City Manager & City Clerk

TYPE OF CONTRACT:

Other
New

Have there been any changes to the Contract Template? ☒ No ☐ Yes

CONTRACT AMOUNTS: Not Applicable

*Council Approved ENRA, July 11, 2018
Resolution Attached*

APPROVAL AUTHORITY: Council

INSURANCE REQUIREMENTS:

Waivers requested ☒ No ☐ Yes (If Yes, Route to Risk Manager for signature first)

BUDGETARY:

Amount

☐ Included in Budget (Simpler report attached showing amounts)
Project String Accounting String

Amount	Project String	Accounting String

ATTACHMENTS:

☒ Agreement and all Exhibits ☐ Resolution (all contracts over \$75k) ☐ SIR Questionnaire
☐ Certificate of Insurance, naming City of South San Francisco as an Additional Insured

DEPARTMENT HEAD ACKNOWLEDGEMENT:

Alex H.
The contract, amendments, exhibits, insurance requirements/waivers and attachments have been reviewed and included.

RISK MANAGER APPROVAL OF INSURANCE WAIVER:

CITY ATTORNEY APPROVAL OF ENTIRE AGREEMENT:

Comments:

☒ Approval of Agreement ☐ Approval of Insurance ☐ Add Agreement to Contract Tracker

ASSISTANT CITY MANAGER'S APPROVAL:

[Signature]
(Only if amount is over \$25,000)

FINAL APPROVAL:

CITY CLERK:

[Signature]
City Manager on behalf of Council

- ☒ Please attest, keep a copy for your files, and return to Originating Department
☒ Please upload to Laserfiche and return to Originating Department

COPY SENT TO VENDOR:

Yes

See address in ENRA

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this “**Agreement**”) is entered into by and between SSF PUC Housing Partners, LLC, an affiliate of AGI Avant Group, Inc. and KASA Partners (“**AGI-Kasa**” or the “**Developer**”) and the **CITY OF SOUTH SAN FRANCISCO**, a municipal corporation (“**City**”), dated as of July 23rd 2008 (the “**Effective Date**”). City and Developer are each referred to as “**Party**” or collectively referred to as the “**Parties**.”

WHEREAS, the City is the owner of certain real property (the “**Property**”) located in the City of South San Francisco, California, known as County Assessor’s Parcel Number (“**APN**”) 093-312-060, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and,

WHEREAS, the former Redevelopment Agency of the City of South San Francisco (“**RDA**”) purchased the Property from the City and County of San Francisco/San Francisco Public Utilities Commission on January 31, 2008; and,

WHEREAS, on June 29, 2011 the legislature of the State of California (the “**State**”) adopted Assembly Bill x1 26 (“**AB 26**”), which amended provisions of the Redevelopment Law; and,

WHEREAS, pursuant to AB 26 and the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26 (together with AB 1484, the “**Dissolution Law**”), the RDA was dissolved on February 1, 2012; and,

WHEREAS, pursuant to the Dissolution Law, the Successor Agency to the Redevelopment Agency for the City of South San Francisco (“**Successor Agency**” or “**Agency**”) prepared a Long Range Property Management Plan (“**LRPMP**”), which was approved by a resolution of the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of South San Francisco (“**Oversight Board**”) on November 19, 2013, and on May 21, 2015, the Oversight Board approved the Amended Long Range Property Management Plan (“**LRPMP**”), which was approved by the California Department of Finance (“**DOF**”) on October 1, 2015; and,

WHEREAS, the LRPMP establishes a plan for transferring or selling the all former RDA properties, including those properties identified in the LRPMP to be transferred from the Successor Agency to the City for redevelopment activities consistent with the Redevelopment Plan and the LRPMP; and,

WHEREAS, the Property is identified in the LRPMP as one of the properties to be transferred from the Successor Agency to the City for development consistent with an approved redevelopment project pursuant to Health and Safety Code section 34191.5(c)(2) and in accordance to the requirements set forth in the LRPMP; and,

WHEREAS, pursuant to the LRPMP and Dissolution Law, the Agency’s transfer of real property assets to the City for future development is subject to the provisions of a Master Agreement for Taxing Entity Compensation by all Taxing Entities; and,

WHEREAS, the City and Taxing Entities entered into an Amended and Restated Master Agreement for Taxing Entity Compensation, dated October 18, 2016 (“**Master Compensation Agreement**”), which governs the distribution of any net proceeds received from the sale of the Property; and,

WHEREAS, consistent with the terms of the LRPMP and the Master Agreement for Taxing Entity Compensation, the Agency transferred the Property to the City; and,

WHEREAS, in late October 2017, staff sent a request for proposals (“**RFP**”) to the selected final developer teams. The 90-day solicitation concluded on February 5, 2018. Five developer teams submitted responses to the RFP: AGI-KASA, Blake Griggs, Republic Metropolitan, Sares Regis, and SummerHill Housing Group; and,

WHEREAS, on March 12 and 13, 2018, the Joint Housing Subcommittee (“**Committee**”) interviewed the five developer teams that submitted responses to the RFP; and,

WHEREAS, on March 28, 2018 and May 2, 2018, the City Council for the City of South San Francisco held a public meetings to solicit public comment and review the Committee recommendation, selected AGI-KASA and authorized staff to begin to negotiate this Agreement; and,

WHEREAS, the City is interested in selling the Property to Developer consistent with Dissolution Law, the LRPMP, and the Master Compensation Agreement, contingent upon Developer supplying a Term Sheet (“**Term Sheet**”), preparing all appropriate environmental review documents, and applying for land use entitlements from the City and if such entitlements are granted constructing a high-density, multi-family development including ground floor retail space, a child care center, and twenty (20) percent affordable housing (“**Project**”) on the Property; and,

WHEREAS, Developer anticipates expending funds to conduct further community outreach to refine the Project, prepare environmental review documents, architectural and design drawings and conduct certain studies that are needed to assess the feasibility of the Project and seek land use entitlements and therefore requires a grant of exclusive negotiating rights in order to be willing to make such expenditures; and

WHEREAS, at its meeting on July 11, 2018, City approved this Agreement and directed staff to negotiate a disposition agreement for the Property with Developer.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Good Faith Efforts to Negotiate. The Parties will use their best efforts to successfully negotiate a property disposition agreement that will describe the terms and conditions governing the disposition of the Property by City, and will be accompanied with the

necessary project entitlements (“**Purchase Agreement**”). The Parties will diligently and in good faith pursue such negotiations. Furthermore, the Parties will use their best efforts to obtain any third-party consent, authorization, approval, or exemption required in connection with the transactions contemplated hereby. This Agreement does not impose a binding obligation on City to convey any interest in the Property to Developer, nor does it obligate City to grant any approvals or authorizations required for the Property or any project or improvements constructed thereon.

- a. If Developer has not continued to negotiate diligently and in good faith, City will give written notice thereof to Developer who will then have ten (10) business days to commence negotiating in good faith. Following the failure of Developer to thereafter commence negotiating in good faith within such ten (10) business day period, this Agreement may be terminated by City. If this Agreement is terminated by City pursuant to the above sentence, Developer acknowledges and agrees that City will suffer damages, including lost opportunities to pursue other development alternatives for the Property and delayed receipt of property tax revenues from the Property, and that it is impracticable and infeasible to fix the actual amount of such damages. Therefore, the Parties agree that if this Agreement is terminated as provided above, City will retain the full ENRA Deposit and Reimbursement Deposit amounts (as defined in Section 5 of this Agreement, *infra*), plus any interest thereon, as fixed and liquidated damages and not as a penalty, and following such termination neither Party will have any further rights against or liability to the other under this Agreement, except as set forth in Section 15 of this Agreement.
 - b. If City has not continued to negotiate diligently and in good faith, Developer will give written notice thereof to City which will then have ten (10) business days to commence negotiating in good faith. Following the failure of City to thereafter commence negotiating in good faith within such ten (10) business-day period, this Developer, City will return a prorated portion of the ENRA Deposit and any unspent portion of the Reimbursement to Developer in accordance with the provisions of Section 5 of this Agreement and neither Party will have any further rights against or liability to the other under this Agreement, except as set forth in Section 15 of this Agreement.
 - c. If the Parties proceed to negotiate diligently and in good faith, but are unable to reach agreement on the terms of disposition and development, then City will return a prorated portion of the ENRA Deposit and any unspent portion of the Reimbursement Deposit to Developer in accordance with the provisions of Section 5(c) of this Agreement and neither Party will have any further rights against or liability to the other under this Agreement, except as set forth in Section 15 of this Agreement.
2. Developer’s Exclusive Right to Negotiate With City. City agrees that it will not, during the term of this Agreement, directly or indirectly, through any officer, employee, agent, or otherwise, solicit, initiate or encourage the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the

development of the Property, and City will not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Property or any portion thereof.

Furthermore, City will not, directly or indirectly, through any officer, employee, agent or otherwise, engage in negotiations concerning any such transaction with, or provide information to, any person other than Developer and its representatives with a view to engaging, or preparing to engage, that person with respect to the disposition or development of the Property or any portion thereof.

3. Term.

- a. The term of this Agreement (“**Term**”) commences on the Effective Date. The Agreement will have an initial term of 365 days, unless extended or earlier terminated as provided herein.
- b. During the Term, Developer will provide City with progress reports every sixty (60) days with respect to Developer’s due diligence review of the Property, commencement of environmental requirements under CEQA, preparation of architecture and construction plans, and general progress toward development of the Property.
- c. The Term of this Agreement may be extended for up to a maximum of three (3) separate sixty (60) day periods upon the receipt of an additional ENRA Deposit under Section 5(a), of fifty thousand dollars (\$50,000) for each sixty (60) day extension period (“**ENRA Extension Deposit**”), and the consent of the City acting through and at the discretion of its City Manager, or his/her designee (“**City Manager**”). The Developer understands that the City will only consider extension(s) of the Term of this Agreement where Developer has demonstrated, to the City’s satisfaction, substantial progress toward development of the Property, including, but not limited to, community outreach, submittal of a development application, the receipt of any City required environmental review documents necessary to satisfy CEQA, submittal of architecture and construction plans, payment of any applicable processing and plan check fees, or undergoing City review of any necessary land use entitlements.
- d. The Term of this Agreement may also be extended for additional time when the City directs Developer to halt or pause in its deliverables or due diligence required under this ENRA. In the instance when the City directs a halt or pause in the schedule the ENRA may be extended by the City Manager and Developer for a commensurate time that the schedule was paused.

4. Relationship of the Parties. Nothing in this Agreement creates between the Parties the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

5. Deposits to City.

- a. In consideration for the right to exclusively negotiate under this Agreement, Developer will, within ten (10) business days of the Effective Date, remit to City a deposit in the amount of One Hundred Thousand Dollars (\$150,000), which will be credited toward the final negotiated purchase price of the Property (“**ENRA Deposit**”). City will deposit the ENRA Deposit in an interest bearing account of the City and any interest, when received by City, will become part of the ENRA Deposit.

During the term of this Agreement, Developer will reimburse City for all reasonable staff and consultant time necessary to draft and negotiate the Purchase Agreement for the disposition of the Property. Developer will, within ten (10) business days of the Effective Date, remit to City a payment in the amount of Fifty Thousand Dollars (\$50,000) in immediately available funds (“**Reimbursement Deposit**”). Any funds previously deposited by Developer pursuant to a preliminary application will be credited towards the Reimbursement Deposit. City will deposit the Reimbursement Deposit in an interest bearing account of the City and any interest, when received by City, will become part of the Reimbursement Deposit. The Reimbursement Deposit may be drawn upon by the City to reimburse staff, City Attorney, and City consultant costs to draft documents for, negotiate and facilitate the disposition of the Property. Should the full amount of the Reimbursement Deposit be exhausted during the term of the Agreement, the City may require the Developer to provide additional funds to recover staff and consultant costs. Documentation of staff time and consultant costs will be retained and provided to the Developer upon request.

- b. City agrees to account for the ENRA Deposit and Reimbursement Deposit, interest earnings, and any expenditures made in furtherance of this Agreement consistent with all reporting requirements of the DOF.
- c. In the event that Developer terminates this Agreement before the expiration of the Term pursuant to Section 1(b) or Section 14(c), the City will return any prorated portion of the ENRA Deposit to the Developer. The prorated ENRA Deposit will be calculated by dividing the full ENRA Deposit (including any ENRA Extension Deposits) by the number of months in the Agreement Term. This amount will be multiplied by the number of months remaining on the Term at the time of Developer’s termination. The resulting figure will be the prorated ENRA Deposit that the City will reimburse to the Developer.
- d. In the event the Agreement is terminated by either Party for any reason other than Developer’s breach of its obligations under this Agreement, the remaining balance of the Reimbursement Deposit and any interest earned will be returned to Developer, minus amounts that the City retains attributable to the amount of costs and consulting fees actually and reasonably incurred and documented by City in implementing this Agreement, as set forth in subsection (a) of this Section 5.

- e. In addition to the payments to City discussed herein, Developer shall be subject to all applicable fees imposed by the City for processing land use entitlements as set forth in the City's adopted Master Fee Resolution and any applicable cost recovery and indemnifications agreements.
- 6. Terms and Conditions of the Purchase Agreement. The Parties agree to use their best efforts to successfully negotiate a Purchase Agreement including, but not limited to, the affordability covenants, commercial property use restrictions, vesting and certainty of fees and exactions through a stand-alone Development Agreement with the City, terms of the purchase and the option price. The Parties agree the terms of the ultimate disposition agreement shall be based on those terms set forth herein and in Exhibit B, attached hereto and incorporated herein by reference.
- 7. Developer's Studies; Right of Entry.
 - a. During the Term of this Agreement, Developer will use its best efforts to prepare, at Developer's sole cost and expense, any studies, surveys, plans, specifications and reports ("**Developer's Studies**") Developer deems necessary or desirable, in Developer's sole discretion, to complete its due diligence for the Property. Developer's Studies may include, without limitation, title investigation, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. The Developer will have rights of access to the Property to prepare the Developer's Studies.
 - b. Developer hereby agrees to notify the City twenty-four (24) hours in advance of its intention to enter the Property.
 - c. Developer will provide the City with work plans, drawings, and descriptions of any intrusive sampling it intends to do. Developer must keep the Property in a safe condition during its entry. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense.
 - d. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by City) and hold the City, its officials, officers, employees, and volunteers ("**City Parties**") harmless from and against all claims resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 7; excluding claims caused by the gross negligence or willful misconduct of the City Parties. Developer's indemnification obligations set forth in this Section 7 shall survive the termination of this Agreement for a period of two (2) years or as otherwise superseded by the terms of the Purchase Agreement.

- e. If upon expiration of the Term of this Agreement the Parties have not successfully negotiated a Purchase Agreement, Developer will provide City within fifteen (15) days following said date of expiration copies of the Developer's Studies completed by such date. Developer will also provide City with copies of any Developer's Studies completed after the expiration of the Term within fifteen (15) days following completion of such studies, or if Developer intends not to complete any Developer Studies, Developer will provide City with copies of such uncompleted studies.
8. City's Reports and Studies. Within ten (10) business days following the Effective Date, City will make available to Developer for review or copying at Developer's expense all non-privileged studies, surveys, plans, specifications, reports, and other documents with respect to the Property that City has in its possession or control, which have not already been provided. Studies or documents prepared by City and its agents solely for the purpose of negotiating the terms of a Purchase Agreement are not required to be provided by City to Developer and are excluded from this requirement.
 9. Developer's Pro Forma, Evidence of Financing and Schedule for Conveyance of Property Following Potential Approval of a Purchase Agreement. At least 45 days prior to City consideration of the Purchase Agreement, Developer will provide City with a pro forma for the Project that confirms the financial feasibility of Developer's proposed development of the Property and planned financing for the Project. The parties agree that the Purchase Agreement will contain language that will address the following pre-conveyance requirements: (1) evidence satisfactory to City that Developer has secured binding commitments, subject only to commercially reasonable conditions, for all funding necessary for the successful purchase of the Property and completion of the Project, (2) evidence satisfactory to City, that Developer has a signed construction contract for the completion of the Project, and Developer's contractor has or will obtain payment and performance bonds sufficient to ensure completion of the Project, and (3) obtain approval of final construction plans for the Project, and issuance of building permits for the Project.
 10. Full Disclosure. Developer is required to make full disclosure to City of its principals; officers; major stockholders, partners or members; joint ventures; negotiators; development managers; consultants and directly involved managerial employees (collectively, "**Developer Parties**"); and all other material information concerning Developer. Any material change in the identity of the Developer Parties will be subject to the approval of City, which will not be unreasonably withheld. Developer will make and maintain full disclosure to City of its methods of financing to be used in the acquisition and development of the Property.
 11. Periodic Reporting to Governing Bodies. City will report periodically to the City Council, Agency Board and/or the Oversight Board on the status of negotiations, and Developer may be asked to attend such meetings to provide those bodies with a status update of their development efforts related to this Agreement.

12. Confidentiality; Dissemination of Information. To the extent permitted by law, during the term of this Agreement, each Party will obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party will be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this Agreement will prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations.
13. Execution of Purchase Agreement. The City has no legal obligation to grant any approvals or authorizations for the sale of the Property or any development thereon until the Purchase Agreement has been approved by the City. Such consideration and potential approval shall not occur until the City has completed, considered and certified/approved any required CEQA environmental review documents.
14. No Binding Commitments. City has no legal obligation to grant any approvals or authorizations for the disposition and development of the Property until approved by the City Council. Such approvals, and any future approvals required as part of the entitlement process, are subject to completion of environmental review by City in accordance with CEQA, and City shall not take any discretionary actions committing it to a particular course of action in connection with the Project until City has completed, considered and certified/approved any additionally required CEQA environmental review documents.
15. Termination.
 - a. This Agreement may be terminated at any time by mutual consent of the Parties.
 - b. City or Agency shall have the right to terminate this Agreement upon its good faith determination that Developer is not proceeding diligently and in good faith to carry out its obligations pursuant to this Agreement. City or Agency will exercise such right in accordance with the provisions set forth in Section 1 of this Agreement.
 - c. Developer will have the right to terminate this Agreement, in accordance with the provisions set forth in Section 1 of this Agreement, if the results of its investigation of the Property are unsatisfactory, in Developer's sole and absolute discretion, with respect to Developer's desired development activities or if Developer is unable to obtain other necessary approvals, rights or interests.
 - d. Neither Party will have the right to seek an award of damages as a result of the termination of this Agreement pursuant to this Section.

16. Effect of Termination. Upon termination as provided herein, or upon the expiration of the Term and any extensions thereof without the Parties having successfully negotiated a Purchase Agreement, this Agreement will forthwith be void, and there will be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 5 (Deposits to City), Section 7(d), Section 12 (Confidentiality; Dissemination of Information), Section 18 (Indemnification), and Section 22 (Brokers) will survive such termination. Provided further, that upon termination or expiration of this Agreement without the Parties having successfully negotiated a Purchase Agreement, Developer will deliver to City all of the Developer's Studies pursuant to the provisions of Section 7 of this Agreement.
17. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement will be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices will be sent by:
- a. Personal delivery, in which case notice is effective upon delivery;
 - b. Certified or registered mail, return receipt requested, in which case notice will be deemed delivered on receipt if delivery is confirmed by a return receipt;
 - c. Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
 - d. Facsimile transmission, in which case notice will be deemed delivered upon transmittal, provided that
 - i. A duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or
 - ii. A transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile will be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City : City of South San Francisco
Attn: City Manager
400 Grand Avenue
South San Francisco, CA 94080
Tel (650) 877-8501
Fax (650) 829.6609

with a copy to: Meyers Nave
Attn: Jason Rosenberg

555 12th Street, Suite 1500
Oakland, CA 94607
Tel (510) 808-200
Fax (510) 444-1108

City of South San Francisco
Attn: Economic and Community Development
Director
400 Grand Avenue
South San Francisco, CA 94080

Developer: SSF PUC Housing Partners, LLC
c/o AGI Avant Group Inc.
100 Bush Street, Suite 1450
San Francisco, CA 94104

with a copy to: Holland and Knight LLP
Attn: Tamsen Plume
50 California Street, Suite 2800
San Francisco, CA 94111

18. Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the City of South San Francisco and their elected and appointed officials, officers, agents, representatives and employees, the Agency and their elected and appointed officials, officers, agents, representatives and employees, (“**Indemnitees**”) from and against all claims, costs (including without limitation reasonable attorneys’ fees and litigation costs) and liability, arising out of or in connection with this Agreement and/or arising out of or in connection with the Developer’s access to and entry on the Property pursuant to Section 7 of this Agreement; provided however, Developer will have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee.
19. Severability. If any term or provision of this Agreement or the application thereof will, to any extent, be held to be invalid or unenforceable, such term or provision will be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.
20. Entire Agreement; Amendments In Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement

may be executed in multiple counterparts, each of which will be an original and all of which together will constitute one agreement.

21. Successors and Assigns; No Third-Party Beneficiaries. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party will transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent will be void. Notwithstanding the foregoing, Developer is permitted to assign this Agreement without such written consent, provided that Developer assigns this Agreement to an entity that is wholly controlled by Developer. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and will not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.
22. Brokers. Each Party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section will survive the expiration or earlier termination of this Agreement.
23. Approvals. Unless otherwise provided in this Agreement, the City Manager will be authorized to enter into all written approvals, consents or waivers by the City without further authorization by the City Council. Nothing herein, however, will be deemed to prevent the City Manager from requesting formal approval by the City Council if the City Manager, in his or her sole discretion, determines to seek such approval.
24. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.
25. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.

~ SIGNATURES ON FOLLOWING PAGE ~

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY

By: _____

Mike Futrell
City Manager

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

By: _____

Jason Rosenberg
City Attorney

DEVELOPER

By: _____

APPROVED AS TO FORM:

By: _____

Tamsen Plume, Holland & Knight Counsel for SSF PUC Housing Partners, LLC

EXHIBIT A

Property

EXHIBIT B

Criteria	DEVELOPER Commitment
Prevailing Wages for Construction	Yes, or as approved by the City Council
Sites	The project area comprises the Property as defined in Exhibit A.
Development Type	High-density, mixed-use development.
Affordable Units	At least twenty percent of the total number of units in the Project shall be affordable and constructed with the first residential phase, unless otherwise approved by the City Manager.
Retail Space/Live Work	Yes
Project Amenities	Childcare center Public open space Centennial way improvements Ground floor retail
Developer's Equity Stake	Minimum 35%
Oak Avenue Extension	Developer shall fund and construct the Oak Avenue Extension as designed by the City in consultation with interested parties, including the Developer. The City and Developer shall mutually agree upon the final cost of construction of the Oak Avenue Extension. Developer will contribute their fair share to the overall cost of the Extension and will be reimbursed for the remaining construction costs. The City and Developer shall agree upon when the City is required to reimburse the Developer.
Community Facilities District	Developer shall support and participate in any planned Community Facilities District affecting the Property.
Project Entitlement/ Purchase Agreement Consideration and Construction Period	Prior to approval of Purchase Agreement, Developer shall prepare all necessary documents for project entitlements and complete all necessary public hearings for consideration of approval.
Developer Proforma	Developer shall provide a pro forma based on the entitlement package, and other terms negotiated during ENRA period. Forty-five (45) days prior to City consideration of the Purchase Agreement, developer will provide City with a pro forma for the Project that confirms the financial feasibility and planned financing sources, including letters of intent from equity partners.
Relocation/Replacement	The Developer shall be responsible for all "on-site" work to relocate and upgrade required utilities and infrastructure on the property. The City and Developer shall mutually agree to the scope of work to relocate and upgrade required "off-site"

	utilities and infrastructure, including, by not limited to, along Mission Road. The final scope of the work and costs shall be finalized in the Purchase Agreement.
Community Outreach	Within thirty (30) days of the approval of the ENRA, the developer shall submit a comprehensive community outreach plan for approval by City staff, which will establish a plan to meet the timelines set in this Agreement.