

**AMENDMENT NO. 1 TO THE MEASURE K LOAN AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
HOUSING ENDOWMENT AND REGIONAL TRUST**

THIS AMENDMENT NO. 1 TO THE AGREEMENT, entered into this _____ day of _____, 2023, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Housing Endowment And Regional Trust, hereinafter called "Contractor" or "HEART";

W I T N E S S E T H:

WHEREAS, on August 1, 2017, the parties entered into a Loan Agreement for the purpose of making housing development, preservation, acquisition, and rehabilitation loans to non-profit and for-profit developers and educational institutions for a term of five years upon the approval of the agreement, in an amount not to exceed \$5,000,000; and

WHEREAS, the parties wish to amend the Loan Agreement to revise the terms of the Agreement, extend the term through July 31, 2029 and replace Exhibits A and B in their entireties.

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

1. Section 2 of the Loan Agreement is amended to read as follows:

2. Loan

County hereby agrees to loan HEART a sum not to exceed Five Million Dollars (\$5,000,000) in consideration of, and on the condition that, the full sum loaned by the County to HEART be used for the sole purpose of carrying out the Project as identified in Exhibit A (rev. August 1, 2023), and in no event shall the County's total fiscal obligation under this Agreement exceed this amount. HEART agrees to assume any obligation to secure and pay all additional funds that shall be necessary to carry out the Project.

Funds loaned under this Agreement shall not be disbursed until execution of this Agreement by County and HEART and the funds shall be disbursed as described herein.

Upon execution of this Agreement by both Parties and written request of HEART in a form acceptable to the County, the County shall remit to HEART's account (or accounts) kept in the County Pool, an amount directed by HEART and will, from time to time thereafter, upon written request of HEART, remit funds to HEART's account (or accounts) kept in the County Pool, in such amounts as directed by HEART, provided, however, that in no event shall the total amount of the Loan to HEART under this Agreement exceed Five Million Dollars (\$5,000,000). HEART's request(s) to remit funds shall be accompanied by such supporting and substantiating documentation as the County may reasonably request (e.g., loan-related documentation etc.) and submittal of any reports required in Exhibits A (rev. August 1, 2023) or B (rev. August 1, 2023). All requests by HEART to the County to remit funds shall be made no later than July 31, 2028 (one year prior to the last day of the Term of this Agreement). The County reserves the right to change the disbursement method of the Loan during the Term of this Agreement.

Requests for remittance and associated documentation shall be submitted to the attention of: Raymond Hodges, Director, Department of Housing.

2. Section 3 of the Loan Agreement is amended to read as follows:

3. Term & Termination:

Subject to compliance with all terms and conditions, the Term of this Agreement shall begin on the date stated in the preamble to this Agreement (i.e., August 1, 2017) and shall end on July 31, 2029, provided, however, the repayment terms of the Loan shall be pursuant to the provisions of Exhibit A (rev. August 1, 2023) herein. HEART shall make all loans under the Project, as described in Exhibit A (rev. August 1, 2023), no later than July 31, 2028 (one year prior to the last day of the Term of this Agreement). While this Agreement will not automatically renew, nor shall anything in this Agreement imply the possibility of any future County loans to HEART, the Parties may agree in writing to extend the Term of this Agreement.

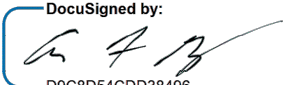
County may terminate this Agreement at any time due to the unavailability of Federal, State, or County funds by providing written notice to HEART within a reasonable time after County learns of said unavailability of funding. HEART acknowledges that this Agreement may be subject to approval of the Board of Supervisors, and assumes all risk of possible non-appropriation and non-approval of funds. However, if, at the time of such termination of the Agreement, HEART has already made loans or the HEART governing board has approved loans under the Project, as described in Exhibit A (rev. August 1, 2023) of the Agreement, no termination of this Agreement shall be deemed to impact the validity of such loans, nor shall HEART have any obligation to repay the County such amounts that have been so loaned until the end of the contractual term of such Project loans.

County may suspend and/or terminate this Agreement if, after thirty 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. Further, the County may, in its sole discretion, withhold or cancel pending and future disbursements of loan funds and/or require HEART to return some or all funds disbursed under this Agreement in the event of such breach of the Agreement. In the event of such termination, HEART shall either assign all outstanding Project loans to the County or HEART shall promptly pay the County the outstanding balance of the Loan, plus accrued interest.

3. Original Exhibit A and B are replaced with Exhibit A (rev. August 1, 2023) and Exhibit B (rev. August 1, 2023).
4. **All other terms and conditions of the loan agreement dated August 1, 2017, between the County and Contractor shall remain in full force and effect.**

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Housing Endowment And Regional Trust

 <small>DocuSigned by: D9C8D54CDD38496...</small>	10/4/2023	Armando Sanchez
_____ Contractor Signature	_____ Date	_____ Contractor Name (please print)

For County:

COUNTY OF SAN MATEO

(Signature)

Authorized Designee

County of San Mateo

Date

Job Title (please print)

(please print name)

Authorized Designee

County of San Mateo

Exhibit A (rev. August 1, 2023)

- A. All requests by HEART to remit funds shall be made no later than July 31, 2028 (one year prior to the last day of the Term of this Agreement) and HEART shall make all Project loans no later than July 31, 2028 (one year prior to the last day of the Term of this Agreement). HEART shall repay the County for the \$5 million loan no later than July 31, 2029. The Loan principal may be prepaid.
- B. HEART shall pay interest to the County on the Loan. Interest on disbursed Loan principal shall be paid on an annual basis starting twelve months from the date of the initial disbursement. The interest shall be the amount of interest that all Loan funds that have been remitted to HEART would have earned had these funds been invested in the San Mateo County Pooled Investment Fund (the "Treasury Pooled Rate") starting on the date that the funds in question have been remitted to HEART and ending on the date that such funds are repaid. Interest at the Treasury Pooled Rate shall be calculated on a monthly basis, according to the following calculation for each month that any portion of the Loan remains outstanding:

Principal x Monthly Interest Rate x (No. of Days in Month/No. of Days in Year)

Where "Principal" is the Loan Amount that remains outstanding as of the last day of the month in question; "Monthly Interest Rate" is the monthly gross earnings as reported in the most recently available San Mateo County Treasurer's monthly investment report, available on the Treasurer-Tax Collector's website: (<http://www.sanmateocountytreasurer.org/investmentReports.html>); "No. of Days in Month" is the number of days in the month for which the Treasury Pooled Rate is being calculated; and "No. of Days in Year" is 365, except in leap years, in which the number of days in the year shall be 366. Notwithstanding the foregoing, as to any Loan funds that HEART loans out pursuant to the Project at a rate less than 3%, the interest rate that HEART is required to pay on such Loan proceeds shall not exceed two percent (2%) per annum.

- C. The County and HEART agree that the Loan funds shall only be used to perform the Project. For purpose of this Agreement, the Project shall consist of HEART using the proceeds of the Loan to make the following categories of loans for housing developed within San Mateo County:
- a. **Development Loans:** HEART may use proceeds of the Loan to make predevelopment, acquisition, construction and bridge loans that are consistent with the terms of HEART's QuickStart Loan Program ("Development Loans"). The Development Loans will be made to non-profit and for-profit organizations and educational agencies and institutions (including, for example, public school districts) for the development of affordable housing and workforce housing projects. HEART will target affordable housing projects for residents with up to 120% of Area Median Income ("AMI") and preference for such loans will be given to projects with greater affordability undertakings. The Development Loans will be for the construction of multi-family rental or ownership developments with projects providing larger numbers of units receiving preference. HEART will require appropriate and industry-standard affordability covenants on a number of project units commensurate with the level of funding provided by the Development Loan. HEART may use up to Five Million Dollars of the Loan for Development Loans. The terms of Development Loans may be for up to nine years at interest rates determined by HEART that are appropriate to the nature of the proposed development.

Upon request of the County, HEART shall promptly provide the County with copies of all loan guidelines and underwriting standards and procedures for review and approval of the County's Department of Housing.

Prior to the disbursement of any Development Loan, HEART shall ensure that the following documents are entered into, executed and, where customary or appropriate, acknowledged and recorded, with conformed copies provided to the County's Department of Housing:

- Promissory note for the Development Loan executed by the borrower and payable to HEART ("Note"). The Note shall include a provision stating that repayment of the Development Loan and applicable interest shall be made to the County in the event that HEART ceases to exist or operate during the term of the Development Loan.
- Deed of trust securing the repayment of the Note executed by the borrower and recorded in the official records of the San Mateo County Recorder as a lien against borrower's interest (leasehold or fee) in all lots upon which the development will take place ("Deed of Trust").
- Development Loan Agreement executed by the borrower and HEART which shall set forth the terms and conditions for closing and disbursing the Development Loan proceeds, including, but not limited to, requirements for title insurance for the Deed of Trust and borrower's responsibilities and obligations with respect to hazardous substance detection, disclosure and remediation.
- Development Loans for the development of rental housing projects shall incorporate a regulatory agreement, executed by the borrower and HEART, and recorded in the official records of the San Mateo County Recorder, documenting the affordability restrictions for the project. The affordability restrictions shall be for a minimum term of fifty-five (55) years. However, HEART will defer to deed restriction of other funders that satisfy HEART requirements provided they are recorded at closing of permanent financing.
- Development Loans for the development of for-sale housing projects shall also incorporate into the documentation for the sale of every individual housing unit to a home owner/purchaser of a unit subject to an affordability restriction a deed restriction preserving the affordability of the for-sale home at the applicable level for a period of forty-five (45) years in compliance with HEART's Programs. The deed restriction shall be recorded in the official records of the San Mateo County Recorder. However, a deed restriction is not required if it would conflict with the requirements or law of another public funding source providing funds to finance the unit.

- b. **Preservation, Acquisition, and Rehabilitation Loans:** With the approval of the Director of the County's Department of Housing, HEART may use proceeds of the Loan to make loans for affordable or workforce housing preservation, acquisition or rehabilitation that are consistent with the terms of HEART's QuickStart Loan Program ("Preservation, Acquisition, and Rehabilitation Loans"). Preservation, Acquisition, and Rehabilitation Loans will be for affordable or workforce multi-family rental developments with a preference given to projects that provide relatively large numbers of units relative to the size of the loan amount. The Preservation, Acquisition, and Rehabilitation Loans will be made to non-profit and for-profit organizations and educational agencies and institutions (including, for example, public school districts) for the development of affordable housing and workforce housing projects. HEART will require appropriate and industry-standard affordability covenants on a number of project units commensurate with the level of funding provided by the Preservation, Acquisition, and Rehabilitation Loan. HEART may use up to Two Million Dollars (\$2,000,000) of the Loan for Preservation, Acquisition, and Rehabilitation Loans. The terms of Preservation, Acquisition, and Rehabilitation Loans may be for up to ten years at interest rates determined by HEART that are appropriate to the nature of the proposed development.

Upon request of the County, HEART shall promptly provide the County with copies of all loan guidelines and underwriting standards and procedures for review and approval of the County's Department of Housing.

Prior to the disbursement of any Preservation, Acquisition, and Rehabilitation Loan, HEART shall ensure that the following documents are entered into, executed and, where customary or appropriate, acknowledged and recorded, with conformed copies provided to the County's Department of Housing:

- Promissory note for the Preservation, Acquisition, and Rehabilitation Loan executed by the borrower and payable to HEART ("Note"). The Note shall include a provision stating that repayment of the Preservation, Acquisition, and Rehabilitation Loan and applicable interest shall be made to the County in the event that HEART ceases to exist or operate during the term of the Preservation, Acquisition, and Rehabilitation Loan.
 - Deed of trust securing the repayment of the Note executed by the borrower and recorded in the official records of the San Mateo County Recorder as a lien against borrower's interest (leasehold or fee) in all lots upon which the development will take place ("Deed of Trust").
 - Preservation, Acquisition, and Rehabilitation Loan Agreement executed by the borrower and HEART which shall set forth the terms and conditions for closing and disbursing the Preservation, Acquisition, and Rehabilitation Loan proceeds, including, but not limited to, requirements for title insurance for the Deed of Trust and borrower's responsibilities and obligations with respect to hazardous substance detection, disclosure and remediation.
 - Preservation, Acquisition, and Rehabilitation Loans for the development of rental housing projects shall incorporate a regulatory agreement, executed by the borrower and HEART, and recorded in the official records of the San Mateo County Recorder, documenting the affordability restrictions for the project. The affordability restrictions shall be for a minimum term of fifty-five (55) years. However, HEART will defer to deed restriction of other funders that satisfy HEART requirements provided they are recorded at closing of permanent financing.
 - Preservation, Acquisition, and Rehabilitation Loans for the development of for-sale housing projects shall also incorporate into the documentation for the sale of every individual housing unit to a home owner/purchaser of a unit subject to an affordability restriction a deed restriction preserving the affordability of the for-sale home at the applicable level for a period of forty-five (45) years in compliance with HEART's Programs. The deed restriction shall be recorded in the official records of the San Mateo County Recorder. However, a deed restriction is not required if it would conflict with the requirements or law of another public funding source providing funds to finance the unit.
- D. For any loan made by HEART pursuant to this Agreement in connection with a project for which the County's Department of Housing is not also providing financial assistance, HEART shall use all reasonable efforts to ensure that recipients of supportive services from County agencies or service providers contracted by the County to provide such services are specifically considered as potential tenants and/or owners of any housing units funded pursuant to this Agreement.

Exhibit B (rev. August 1, 2023)**Semi-Annual Reports**

In accordance with the terms of this Loan Agreement, HEART will, during the Term of the Agreement, implement the Project, as described in Exhibit A (rev. August 1, 2023). HEART will report back to the County regarding various performance measures reasonably determined by the County including, but not limited to, those noted below. Such reporting shall be delivered to the County twice a year, at Mid-Year (no later than January 31) and Year End (no later than July 31) during each fiscal year during the term of this Agreement.

For each reporting period, HEART shall provide the following:

- Fund Balance
- Loan funds committed during reporting period
- Total loan funds committed to date
- Additional funds committed to HEART by cities and other partners

For each project assisted during the reporting period, HEART shall provide the following:

- Project name
- Project address
- Project applicant (LLC and parent organization)
- Project type (new construction, rehabilitation, etc.)
- Project description
- Use of funds (land acquisition, predevelopment loan, acquisition and rehab, etc.)
- Other funds committed by other sources for acquisition, predevelopment or other costs
- Projected construction and permanent sources of funding
- Amount of loan
- Total project cost
- Source and amount of other funding commitments
- Estimated date units will be placed in service
- Number of housing units funded by project type (new construction, rehabilitation, acquisition or other preservation), unit size, and income level
- Number of units reserved for special needs households including seniors, people with disabilities, homeless or at risk of homelessness, foster youth, etc.
- Years of affordability and instrument preserving affordability
- Other project information:
 - Transit-oriented development (TOD) units (located within one half mile of a Caltrain or BART station)
 - Public amenities, if any
 - Green building elements

For each period, HEART shall provide a summary of cumulative project reporting:

- Number of housing units funded by project type (new construction, rehabilitation, acquisition, other preservation), unit size, and income level*
- Number of units reserved for special needs households including seniors, people with disabilities, veterans, formerly homeless*
- Leveraging of HEART funds in HEART-funded projects (other sources committed/projected)*

Project Benchmarks

FY 2017-18	FY 2018-19
Projects assisted: 4 Total Project Units Funded: 166 Affordable Units: 133 (80%) Funds Committed: \$2,500,000	Projects assisted: 3 Total Project Units Funded: 166 Affordable Units: 133 (80%) Funds Committed: \$2,500,000
FY 2019-20 to 2028-29	FY 2019-20 to 2028-29
No portion of the \$5 million loan amount should remain uncommitted for a period longer than 12 months	Funding shall be always committed to a minimum of 100 units of affordable housing during the grant agreement period

Two-Year Report

In addition to the required semi-reports, by no later than July 31, 2019, HEART shall provide a comprehensive update to the County Board of Supervisors on all disbursements of Loan funds to date, any disbursements to third-party borrowers to date, contributions to the Project from any other municipal members of the HEART joint powers authority, and Project activities to date.

Five-Year Report

In addition to the required annual reports, by no later than July 31, 2022, HEART shall provide a comprehensive update to the County Board of Supervisors on the use of all Loan funds from inception to the date of the report, any contributions to the Project from any other municipal members of the HEART joint powers authority, Project activities to date, and a status report of any loans to third-party borrowers that may be outstanding at that time.

Eight-Year Report

In addition to the required annual reports, by no later than July 31, 2025, HEART shall provide a comprehensive update to the County Board of Supervisors on the use of all Loan funds from inception to the date of the report, any contributions to the Project from any other municipal members of the HEART joint powers authority, Project activities to date, and a status report of any loans to third-party borrowers that may be outstanding at that time.

Ten-Year Report

In addition to the required annual reports, by no later than July 31, 2027, HEART shall provide a comprehensive update to the County Board of Supervisors on the use of all Loan funds from inception to the date of the report, any contributions to the Project from any other municipal members of the HEART joint powers authority, Project activities to date, and a status report of any loans to third-party borrowers that may be outstanding at that time.

* Performance measure will be included in Measure K Oversight Report