

**FUNDING COORDINATION AGREEMENT BETWEEN THE COUNTY OF  
SANTA CLARA AND THE COUNTY OF SAN MATEO FOR USE OF THE  
STANFORD AFFORDABLE HOUSING FUNDS (FUND 289) FOR PROJECTS  
LOCATED IN SAN MATEO COUNTY**

This Funding Coordination Agreement (“**Agreement**”) is entered into on the latter of the dates signed by the Parties below, by and between the County of Santa Clara (the “**SC County**”) and the County of San Mateo (“**SM County**”) (each a “**Party**” and collectively the “**Parties**”), with respect to the following facts:

A. WHEREAS, SC County has created the Stanford Affordable Housing Fund (“**SAHF**”) with impact fees contributed by Stanford University to contribute to financing affordable housing that will assist in addressing Stanford University’s housing impact;

B. WHEREAS, the purpose of the SAHF is to contribute to the financing of certain affordable housing projects that meet income and rent restrictions, and that include extremely low income restricted units (“**Projects**”);

C. SC County recognizes that San Mateo County communities near Stanford University are also affected by Stanford University’s housing impact and would benefit from the SAHF;

D. WHEREAS, SM County is committed to creating more affordable housing in the County of San Mateo and since 2013, has invested more than \$200 million to assist with the construction, rehabilitation, and preservation of more than 3,230 units in San Mateo County via an annual Affordable Housing Fund (the “**AHF**”).

E. WHEREAS, by means of its AHF and other state and federal housing finance programs, SM County may have provided funding, or may plan to provide funding for Projects that SC County selects for SAHF funding.

F. WHEREAS, to increase administrative efficiency and reduce duplication of effort, SC County wishes to enter into an agreement with SM County for the administration of SAHF funding awards for certain affordable housing projects selected for SAHF funding in San Mateo County (“**SM County Projects**”).

G. WHEREAS, this Agreement does not commit SM County or SC County to a definite course of action with respect to any specific Project, including the financial administration of any Project that may be proposed for SAHF funding in San Mateo County.

H. WHEREAS, the Parties agree that execution and approval of this Agreement serves an administrative purpose and is not a “project” under the California Environmental Quality Act; and

I. NOW THEREFORE, based on the recitals set forth above, the Parties hereto agree as follows:

## **AGREEMENT**

**I. Incorporation of Recitals:** Recitals A through I are incorporated herein.

### **II. Roles and Responsibilities**

- A. Use of Statement of Work to Identify SM County Projects: SC County and SM County shall coordinate on specific SAHF-funded SM County Projects utilizing a form of Statement of Work (SOW) attached as Exhibit A to this Funding Coordination Agreement. The SOW serves to document that a specific SM County Project has been selected for SAHF funding, including the amount of SAHF funding, the location, the Project sponsor, and a high-level set of key milestones. In addition, SM County shall provide documentation of land use approval, a complete project proforma, including a 20-year cash flow for rental projects, and other Project documentation upon request.
- B. SC County's Role: SC County will administer the SAHF; implement a Notice of Funding Availability which includes SAHF funds; administer the developer solicitation process; review due diligence and feasibility materials submitted by SM County as described in Section II.B above; select Projects, including SM County Projects; and secure SC County Board of Supervisor approval to both award the SM County Projects and to transfer the funding and the administration of the funding of specific SM County Projects to SM County with SM County's written approval.
- C. SM County's Role: For SM County Projects, SM County will perform due diligence and feasibility analyses on Projects and submit such information to SC County, develop and negotiate loan and associated agreements; administer funding; monitor compliance with the SAHF funding requirements described in Section III of this Funding Coordination Agreement and collect and submit loan and residual receipt payments from the SM County Projects to SC County.
- D. Funding Transfers: SC County will transfer funding, via check or wire transfer to SM County, in an amount not to exceed the SAHF amount within 60 days of execution of a SOW for each SM County Project which SM County has agreed to administer from the SAHF. SM County will make its best efforts to re-distribute residual receipts and any other SAHF loan payments to SC County by check or wire transfer 60 days after receipt.

### **III. SAHF Requirements**

#### **A. SAHF Requirements Project Eligibility Criteria**

- 1. Income restrictions. Rental rates for SAHF assisted rental units shall not exceed 30% of extremely low income (ELI) household income levels. Mortgage payments for assisted for-sale units shall not exceed 40% of ELI household income level. The number of SAHF-assisted ELI rental units in each Project, will be calculated based on \$200,000 per ELI unit. The overall affordability of each Project must be approved by SC County.
- 2. Eligible Expenses. The following Project expenses are eligible to be reimbursed with SAHF funding:
  - a. Third party costs required for these transactions, including professional services (architectural, engineering, legal), permit and inspection fees, impact or regulatory fees imposed as a condition of new construction or rehabilitation of

- existing structures, construction costs, and surveys;
  - b. Cost of land and improvements;
  - c. Construction costs are those incurred through construction contracts with a third-party general contractor(s) or subcontractor(s) pertaining to the construction of improvements on the Site, including the costs of bonds and insurance;
  - d. All governmental fees (including fees for testing and permits) paid for development, design, or construction of the Project;
  - e. Reasonable architectural, engineering, and other design/consultant fees related to the development, design and construction of the Project;
  - f. Reasonable legal and accounting expenses, real estate taxes and insurance incurred under permitted financing, and marketing costs; and
  - g. Reasonable and customary financial costs and fees, including bank fees, loan administration fees, appraisal fees, brokerage fees for securing equity or debt financing and all interest charges on construction financing, provided that such costs are paid to independent third parties.
  - h. Other costs as approved by SC County
3. Ineligible Expenses. The following Project expenses, including, but not limited to, are not eligible to be reimbursed with SAHF funding:
- a. Planning (pre-entitlement) and feasibility studies;
  - b. Maintenance or operation;
  - c. Developer fees or in-house administrative expenses; or
  - d. Non-housing project elements such as retail.
4. Refund of SAHF Contribution to an Approved SM County Project: Any balance of SAHF funds remaining after completion of an approved SM County Project, or if the approved SM County Project does not proceed for any reason, less any amounts necessary to pay for eligible expenses rendered prior to the date of completion of the Project or determination that the approved SM County Project will not proceed, shall be refunded by SM County to SC County within sixty (60) calendar days of the effective date of completion of the SAHF-funded SM County Project or determination by SC County that the approved SM County Project will not proceed.

B. Project Developer Requirements

Prior to distribution of SAHF funds from SM County to a Project developer for an approved SM County Project, the Project developer shall be required to:

1. Enter into all required contract documents with SM County (the “SM County Loan Documents” include the SM County Loan Agreement, Leasehold Deed of Trust, Promissory Note and Restrictive Covenant”).
2. Record a regulatory agreement (“Regulatory Agreement”) against the land and the improvements as appropriate, approved by the County of Santa Clara and the County of San Mateo, which will include, but not be limited to, affordability requirements, confirmation of income requirements of the occupants, and an agreement to monitor compliance through an annual

reporting process for a period of at least fifty-five (55) years from the date of the receipt of a Certificate of Occupancy.

3. The SM County Loan Agreement for the approved SM County Project will include a requirement that the Project developer pay SM County an initial loan origination fee as well as an annual administrative fee for the term of the Regulatory Agreement, and to reimburse SM County, or in some cases SC County, for any costs and expenses incurred to enforce compliance or address noncompliance on the part of the Project developer, including reasonable attorneys' fees.
4. Any funds allocated to a particular SM County Project must be utilized within three years of the date the fund allocation is approved by the Santa Clara County Board of Supervisors. Within sixty (60) days of the expiration of this three-year period, or any approved extension, SM County will return this unspent allocation to SC County. The unspent allocation will become part of the SAHF fund balance and SC County may then utilize the funds for other eligible SAHF Projects.
5. Monitoring Requirements: The Project developer must agree to submit and confirm the accuracy of an Annual Report to SM County by January 31 of each year, and whenever ownership of the Project or the property is proposed to change. The Annual Report will provide the following data and additional information established by the Santa Clara County Office of Supportive Housing:
  - Confirm that funds were spent as specified in the SM County Loan Agreement;
  - Confirm that the units acquired, converted or built through assistance from the SAHF are in compliance with the restrictions and conditions of all legal documents;
  - Confirm that income levels of the tenants or owners have been verified by the Project developer and have remained in compliance with all Regulatory Agreement requirements throughout the terms of tenancy or ownership; and
  - Project location, services and amenities
  - Tenant roster listing household size, income and rent for each tenant in a restricted unit
  - Average vacancy during the reporting period

The Project owner must also agree to provide an annual, audited financial evaluation of the Project expenses, revenue and cash flow analysis ("Financial Report") by July 31 of each year, or a date outlined in the SOW of a specific SM County Project. SM County will review and send the approved Annual Report or Financial Report (or a detailed description of why the Annual Report or Financial Report was not approved and the remediation steps to be taken) to the Santa Clara County Office of Supportive Housing within 60 days after receipt. For rental projects, this requirement shall apply for a minimum of fifty-five (55) years from the data of the receipt of a Certificate of Occupancy. For homeownership projects, this requirement shall apply for a minimum of fifty-five (55) years from the initial sale of each home.

A monitoring fee of \$250 per SAHF Unit, but capped at \$5,000 in total for the SAHF-

Assisted Units, will be due annually to San Mateo County by the San Mateo County Project sponsor, commencing on the first day of the first month following the Project's receipt of its Certificate of Occupancy and ending on the expiration date of the Primary County Affordability Covenant, 55 years from the date of receipt of the Certificate of Occupancy.

#### **IV. General Provisions**

- A. Term: This Agreement shall be effective on the date that it is fully executed and shall have a term of ten (10) years. A Party may terminate this Agreement for convenience, with or without cause, upon one hundred and twenty (120) days' written notice to the other Party. Upon termination of this Agreement, the Parties shall negotiate a process and schedule for winding down SM County's financial administration, monitoring and other responsibilities under this Agreement including a process for refunding of any SAHF funds for any SM County Projects that have not entered into contract as of the date of the written notice.
- B. Dispute Resolution: If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.
- C. Amendment: This Agreement may only be modified by a written amendment duly executed by the Parties. This Agreement shall be binding on all successors and assigns of the Parties.
- D. Assignment: No assignment of this Agreement shall be valid without the prior written consent of the other Party.
- E. Indemnification: In lieu of and notwithstanding the pro-rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, the Parties agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each other, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the sole negligent acts or omissions or willful misconduct of the indemnifying party, their officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this Agreement.
- F. No Waiver: The Parties' waiver of any term, condition or covenant, or breach of any term, condition, or covenant shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.

- G. Entirety of Agreement: This agreement is the entire agreement between the Parties relating to the use of the SAHF for SM County Projects. Any prior agreements, promises, negotiations, or representation not expressly set forth in this agreement are of no force or effect.
- H. Warranty of Authority to Execute Agreement: Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.
- I. Severability: If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- J. Governing Law: This Agreement shall be construed and its performance enforced under California law.
- K. Venue: In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the State courts of the County of Santa Clara, and, if federal jurisdiction is appropriate exclusively in the United States District Court for the Northern District of California, in San Jose, California.
- L. Audit and Record Retention: SC County may audit the expenses incurred in the performance of this Agreement. SM County shall retain all records related to any SAHF-funded Projects for seven (7) years after the completion of the Project. During this period, SM County shall make these records available within a reasonable time to SC County for inspection upon request.
- M. Notice: Any notice required to be given by either Party, or which either Party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To SM County: Santa Mateo County, Department of Housing  
264 Harbor. Building A, Belmont, CA 94002  
Attention: Director of Housing

To SC County: County of Santa Clara  
Office of Supportive Housing  
2310 North First Street, Suite 201, San Jose, CA 95131  
Attention: Director

With a Copy to: County of Santa Clara  
Office of County Counsel  
70 W. Hedding Street, East Wing, 9th Floor San Jose, CA 95110  
Attention: County Counsel

Notice shall be deemed effective on the date personally delivered or, if mailed, five (5) days after deposit in the United States mail.

- N. Contract Execution: Unless otherwise prohibited by law or SC County or SM County policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by SC County.

IN WITNESS WHEREOF, the Parties have executed this Agreement as set forth below.

THE COUNTY OF SANTA CLARA

By: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Miriam Sondag  
Deputy County Counsel

THE COUNTY OF SAN MATEO

By: San Mateo County Department of Housing

By: \_\_\_\_\_  
Raymond J. Hodges, Director

## EXHIBIT A: STATEMENT OF WORK TEMPLATE

[Project Name]

This Statement of Work (“**SOW**”) is entered into on the latter of the dates signed by the Parties below, by and between the County of Santa Clara (the “**SC County**”) and the County of San Mateo (“**SM County**”) (each a “**Party**” and collectively the “**Parties**”), with respect to the following facts:

A. WHEREAS, ...;

B. WHEREAS, SM County agrees to receive and administer the SAFH funding for this specific SM County Project [name of the project] outlined below, and will include it in its Affordable Housing Fund (AHF) loan agreement documents and/or other loan documents;

C. NOW THEREFORE, based on the recitals set forth above, the Parties hereto agree as follows:

### STATEMENT OF WORK TERMS

Project name:

Project address:

Project sponsor:

Stanford Affordable Housing **Fund (SAHF) award amount:**

Project Description:

Target Population:

Key Project Milestones:

Residual Receipts and Loan Repayment:



## **EXHIBIT A: STATEMENT OF WORK**

### **965 Weeks Street, Colibri Commons**

This Statement of Work (“**SOW**”) is entered into on the latter of the dates signed by the Parties below, by and between the County of Santa Clara (the “**SC County**”) and the County of San Mateo (“**SM County**”) (each a “**Party**” and collectively the “**Parties**”), with respect to the following facts:

A. WHEREAS, SM County has awarded more than \$21.4 million dollars in AHF and HOME Investment Partnership Program funding to support the development of the 965 Weeks Street Affordable Housing project (AKA Colibri Commons) in East Palo Alto, which is within the six-mile radius of Stanford University;

B. WHEREAS, on November 1, 2022 (Item No. 13), SC County’s Board of Supervisors approved \$1.5 million from the Stanford Affordable Housing Fund (the “**SAHF**”) for a 136-unit, affordable multi-family, rental housing development in East Palo Alto (965 Weeks Street AKA Colibri Commons);

C. WHEREAS, on January 24, 2023, BOS Resolution BOS-2023-5, was passed, which approved delegation of authority to the County Executive, or designee, to negotiate, execute, amend, or terminate all legal documents, including, but not limited to, contracts, loan agreements, and funding agreements with the County of San Mateo Department of Housing relating to a \$1,500,000 residual receipts loan to MidPen Housing Corporation or affiliate to support the 965 Weeks Street Affordable Housing Development (AKA Colibri Commons); and

D. WHEREAS, SM County agrees to receive and administer the SAFH funding for this specific SM County Project, Colibri Commons and will include it in its Affordable Housing Fund (AHF) loan agreement documents and/or other loan documents;

E. NOW THEREFORE, based on the recitals set forth above, the Parties hereto agree as follows:

### **STATEMENT OF WORK TERMS**

Project Name: Colibri Commons

Project Address: 965 Weeks Street, East Palo Alto, CA 94303

Project Sponsor: Mid-Peninsula The Farm, Inc. (MidPen the Farm)

Stanford Affordable Housing Fund (SAHF) Request: One Million Five Hundred Thousand and 00/100 (\$1,500,000.00)

*Project Description:* MidPen the Farm and East Palo Alto Community Alliance and Neighborhood Development Organization (EPACANDO) are collaborating with the City of East Palo Alto to develop 2.52 acres of vacant, City-owned land into 136 multi-family affordable rental homes for low-income residents in San Mateo County.

*Existing Conditions:* None

*Green Building:* Colibri Commons is designed as a walkable, equitable, and integral addition to the East Palo Alto residential district. This development will be an all-electric building and the architecture will be combined with modern energy efficient systems to create a healthy living environment. The proposed project would utilize drought-tolerant planting. Energy-efficient light fixtures and appliances will be employed throughout the building. The overall project was designed to meet the minimum requirements to certify the project through the GreenPoint rating system. Roof-mounted solar panels will be placed on the fifth level of the parking garage and on the roof of the other structures. The all-electric building will be equipped with efficient systems, to allow for solar photovoltaic panels to offset as much of the energy load as possible, while also implementing the use of renewable green energy sources. Each unit will have improved air quality through mechanical and filtered ventilation. The flooring finishes will be primarily hard surfaces, including natural rubber and stained concrete, minimizing dust collection, and further improving the indoor air quality. Additionally, fresh air will be achieved with non-toxic building materials, as well as with mechanical systems that filter and circulate fresh air. The building will also employ smart building technologies to monitor and control energy consumption, lighting, HVAC systems, and other functions, allowing for real-time energy management and efficient use of resources.

Colibri Commons is an all-electric building that is inherently designed around the goal of being the most efficient building possible. The building is suited for solar orientation and has sunshades to protect thermal comfort. These sunshades are intended to keep units from overheating on the south façade. The project is committed to an extensive solar photovoltaic array on its roof to offset its electrical load. Individual units will have their own energy efficient air conditioning (PTAC) unit that will allow them to set their own thermal comfort. Colibri Commons is designed to take advantage of the moderate East Palo Alto climate to bring circulation out to the bridges and incentivize outdoor circulation through the landscaped mews and courtyard spaces. Additionally, there is a specialized team involved in designing the domestic hot water system specifically focused on making it as environmentally efficient and reliable as possible.

*Land Use and Environmental Review:* Project obtained Approval for Entitlements and Environmental Clearance (Dec. 2019)

*Project-Based Vouchers:* MidPen the Farm was also awarded an additional 15 Project Based Section 8 Vouchers from the Housing Authority of the County of San Mateo to further support low-income households.

*Target Population:* All 136 units, except for one manager's unit, at 965 Weeks Street will be targeted for extremely-low, very-low, and low-income families. A total of eight

units (four studio units at 30% AMI and four 1-bedroom units at 30% AMI) will be reserved for occupancy by eligible Mental Health Services Act (MHSA) homeless households referred through the County of San Mateo Behavioral Health and Recovery Services (BHRS). Additionally, 33% of all units will be reserved for extremely low-income households.

*Resident and Supportive Services:* Through its affiliate sister organization, MidPen Resident Services Corporation, MidPen the Farm provides onsite support services and programs to help residents advance; all delivered through the organization's 97 dedicated in-house services staff and a network of over 200 service provider partners. At Colibri Commons, the MidPen Resident Services Program will provide resources available to all working-age adults and youth residents, regardless of income level and with language assistance when needed. Adult services may include programs that help participants build resources, better manage their assets, and advance in their educational and/or career goals. This includes computer training, literacy development, referrals to social services, benefits and resources, and volunteer opportunities and training. Youth services are typically comprised of after school programming based on four core elements: homework assistance, nutritious snacks, enrichment and literacy. The Colibri Commons 965 Weeks Street proposal for resident services is funded through operating income and thus is not dependent on financing outside of the project's control.

Services programs include supportive services that provide supportive residents with individual case managers who ensure the residents sustain their independence and overall well-being through the provision of reframing tools for issues such as experienced trauma. MidPen Resident Services works to ensure all residents are provided with services that promote health and wellness and an improved quality of life including, mental health counseling, community services, and socialization events. MidPen Resident Services will coordinate with the Housing Authority of the County of San Mateo's contracted supportive service agencies for the targeted homeless units. The referred residents for the targeted homeless units will be provided with housing assistance, supportive services and case management. MidPen the Farm will have onsite case management to organize, deliver and coordinate services for the tenants that would like to take advantage of them.

*Project Schedule and Financing:*

Milestone	Date of Completion
1. Site Control	June 2019
2. Community Engagement (continuous and ongoing)	2019
3. Land Use Approval	December 2019
4. Submit 4% Tax Credit Application	February 2023
5. Receive Reservation of Tax Credit Award	May 2023
6. Construction Finance Closing	October 2023
7. Begin Construction	October 2023
8. Start of Lease-Up Activities	July/August 2025
<b>9. Complete Construction</b>	<b>July 2025</b>
10. 100% Occupancy	December 2025
11. Permanent Loan Conversion	May 2026

Permanent Sources and Uses of Funds:

**Permanent Source of Funds**

Federal Tax Credits	\$66,743,474
Permanent Loan	\$16,934,000
San Mateo County Loans	\$21,425,897
Santa Clara County - SAHF	\$1,500,000
LISC Housing Catalyst Fund	\$5,286,000
HCD AHSC	\$11,700,000
City of East Palo Alto Loans	\$7,214,000
HEART LHTF Loan	\$3,230,000
Deferred Developer Fee/GP Equity	\$4,750,527
<b>Total Permanent Source of Funds</b>	<b>\$143,657,503</b>

**Use of Funds**

Acquisition	\$170,000
Hard Cost	\$98,985,644
Hard Cost Contingency	\$5,047,600
Other Costs	\$11,009,873
Legal Fees	\$250,000
Soft Cost	\$25,250,000
Soft Cost Contingency	\$765,000
Financing Costs	\$1,157,800
Developer Fee	\$6,950,527
Capitalized Reserves	\$1,021,586
<b>Total Use of Funds</b>	<b>\$143,657,503</b>

Residual Receipts and Loan Payments: The attached intercreditor agreement outlines the prorate percentage of residual receipts allocated to the SAHF as well as the process by which these will be calculated and timing of distribution. SM County will make its best efforts to distribute the SAHF residual receipts and/or loan repayments received to SC County no later than 60 days after receipt.

**The Parties have executed this Statement of Work as set forth below.**

**THE COUNTY OF SANTA CLARA**

**By: \_\_\_\_\_**

**Approved as to form and legality:**

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**Miriam Sondag**

**Deputy County Counsel**

**THE COUNTY OF SAN MATEO**

**By: San Mateo County Department of Housing**

**By:\_\_\_\_\_**

**Raymond J. Hodges, Director**