



# City of Emeryville

INCORPORATED 1896

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January 18, 2017

Mary Murtagh  
President & CEO  
EAH, Inc.  
2169 E. Francisco Blvd, Suite B  
San Rafael, CA 94901

**Re: 3706 San Pablo Avenue and 1025 West MacArthur Boulevard Development Loan Commitment**

Dear Ms. Murtagh:

The City of Emeryville ("City") is pleased to be able to assist EAH, Inc. A California Nonprofit Public Benefit Corporation, Or Its Assignee ("Developer") in the construction of the 3706 San Pablo Avenue project (the "Project"), located at 3706 San Pablo Avenue/1025 West MacArthur Blvd in Emeryville. On February 16, 2016, the City committed to providing a Development Loan in the amount of \$3.5 million to EAH (Resolution No. 16-16). This letter confirms that the City Council has authorized an additional development loan in the amount of One Million Dollars (\$1,000,000) for the Project.

The following sets forth the terms and conditions under which the City shall provide the loan for the Project:

## **1. Project Attributes**

This commitment of financing is for the specific project as described in the Ground Lease and Disposition and Development Agreement (DDA) dated April 16, 2015 and includes the following attributes:

- **Unit Configuration:** new construction of **87** total units, consisting of 4 studio units, 8 one-bedroom units, 45 two-bedroom units, 23 three-bedroom units and 4 four-bedroom units (including 1 unrestricted three-bedroom manager's unit);
- **Affordability:** **26** units with rents not more than 30% of 30% Area Median Income ("AMI"), **9** units with rents not more than 30% of 40% AMI, **35** units with rents not more than 30% of 50% AMI, **16** units with rents not more than 30% of 60% AMI and **1** manager's unit;

***Exhibit A***

- **Target Population:** The Project will include 11 supportive housing units, 5 of which will be targeted to individuals with HIV/AIDS (Housing Opportunities for Persons with AIDS or “HOPWA”) and 6 of which will be targeted to individuals with development disabilities.
- **Leveraging of Other Funds:** The loan commitment of **One Million Dollars (\$1,000,000)** in City funds will equal no more than 9% of the residential portion of the Project’s total development costs.
- **Supportive Services:** The Project will provide supportive services to the HOPWA units through the Aids Project of the East Bay. It will also partner with East Bay Innovations to provide services for people with developmental disabilities. In addition, a half-time resource coordinator will be on-site to provide residential supportive services to all tenants through resource and referral, programing and event.

## **2. Terms of Loan Repayment; Interest Rate**

The additional City loan totaling \$1,000,000 shall be for a term of for the time period during which the property is regulated by the Affordable Housing Covenant with the City, with a maximum simple interest rate of 3% per year. Prior to the end of loan term, the loan shall be repaid from surplus cash flow, or from the City pro-rata share of project surplus cash flow.

## **3. Length of Funding Reservation**

Loan funds will be reserved no later than June 30, 2017. **The commitments for this loan will expire if the Project does not have commitments for full Project financing and is not able to move forward prior to June 30, 2017.**

## **4. Source of Funds**

Funds for this project have been reserved from the City’s Housing Asset Fund (Fund 298) and the Affordable Housing Impact Fee Fund (Fund 239). The Project must comply with all restrictions imposed by those programs.

## **5. Reserve Requirements**

This Project must meet the City’s requirements for deposits to replacement reserve and operating accounts for the time period during which the property is regulated by the Affordable Housing Covenant with the City.

- **Replacement Reserve:** 0.6% of the replacement cost of the structure annually, up to \$600 per unit for family developments or \$500 per unit for senior developments.
- **Operating Reserve:** An initial operating reserve of *at least* 2% of the gross rental income, which must be capitalized on a monthly basis until the reserve reaches an amount equal to six months operating costs (including debt service costs). The operating reserve must be maintained at this level.

## **6. Accessibility**

The Developer must develop the Project and maintain the Project in compliance with all applicable federal, state and local requirements regarding access for disabled persons.

## **7. Marketing Requirements**

All Project units must be marketed in accordance with the City's Marketing Procedures. A final marketing plan and management agreement, as components of the Final Management Plan, must be submitted by the City at least 180 days before construction is complete, or the beginning of marketing activities, whichever is first. The City will review the Final Management Plan within 30 days of receipt of complete submittal. Copies of all marketing materials must be provided to the City as part of the Final Management Plan.

## **8. Employment Programs**

The following City contracting and employment programs apply to this project:

- Living Wage
- Prevailing Wage
- Minimum Wage and Paid Sick Leave

Prevailing wage determinations are made by the State of California and the federal government and should be requested from the State and the federal government as early as possible.

## **9. Subordination of City Security Interests**

In certain cases, the City may agree to take a subordinate lien position to other financing in regards to its deed of trust. Conditions of such an agreement, which must protect the City's right to cure defaults under other loan agreements and, if curing default, the City's right to transfer the property to an alternate lessor without acceleration of other financing, must be negotiated well before other financing is scheduled to close.

## **10. Closing the Loan**

City Manager is authorized to negotiate loan documents with the Developer within the parameters outlined in this letter and the attached City Council Resolution, with the resulting loan documents requiring City Council approval. To ensure that City documents are signed in a timely manner, final negotiations must be concluded and documents approved by the Developer, City staff, and appropriate attorneys **at least eight weeks prior** to any deadlines for loan closing imposed by other lenders or financing programs. Prior to this, **Developer must allow at least three additional months for negotiations** of the loan documents. Please note that City staff will need to review documents for any other non-City loans prior to the closing of that financing. Please notify the other funders of this requirement and ask them to provide those documents at least a month prior to their closing deadlines. Staff cannot ensure that projects that do not meet this timeline will be signed prior to outside deadlines. The Developer must provide a written schedule for negotiations and closing when commitments for full project financing are achieved.

In addition to approved loan documents, the following documents (at a minimum) must be approved by City staff prior to loan closing:

1. Final development budget
2. Final operating budget
3. 30-year proforma
4. Marketing plan
5. Management plan (including the Management Contract)
6. Firm commitments for full project financing
7. Evidence of insurance that meets City guidelines
8. Loan documents from the other funding sources closing at the same time
9. Sufficient evidence that funds for the supportive services component of the project will be available at the time of occupancy.

If loans from other funding sources are closing at different times, City of Emeryville Economic Development and Housing staff must also review those documents prior to their closing.

#### **11. Beginning Construction**

Construction may not begin prior to the City's issuance of a Notice to Proceed for the Project. At a minimum, approval of the following documents is required to issue the Notice to Proceed:

1. Construction contract approved by City
2. Payment and performance bonds
3. Evidence of contractor's insurance that meets City guidelines
4. Construction budget and schedule approved by City

#### **12. Project Closeout**

In order to release the final administrative fee payment, the following documents must be approved by the City after project completion:

1. Cost certification
2. Demographic and income information of occupants
3. Certification of completion and compliance by project architect
4. A copy of the recorded Notice of Completion
5. Final Rent Schedule

**13. Updates**

The Developer is required to provide updates to the assigned Housing Coordinator a minimum of once a month regarding relevant progress on the project including design and permitting, financing, changes to the schedule and budget, and other project issues.

To acknowledge your receipt of this award letter, please sign and date the bottom of this page and return within a week of receipt to Michael Guina, City Attorney, 1333 Park Avenue, Emeryville, CA 94608. We are exciting to work with you and your staff as the Project continues to move forward.

Sincerely yours,

Carolyn Lehr  
City Manager

Enclosure: City Resolution

The foregoing is accepted by EAH, Inc.  
on \_\_\_\_\_, 2017:

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President & CEO  
EAH, Inc.