

## FUNDING AGREEMENT

(231 Grant Educator Workforce Housing Project)

This Funding Agreement (this “Agreement”) is dated for reference purposes only as of \_\_\_\_\_, 2023, by and between the County of Santa Clara (the “County”) and the Mountain View Whisman School District (the “District”) for the purpose of providing funding to 231 Grant Ave LLC, a California limited liability company (“Developer”) for the construction of the 231 Grant Educator Workforce Housing Project (the “Project”) located at 231 Grant Avenue in Palo Alto, California (the “Property”).

WHEREAS, the County is the owner of the Property and has approved a ground lease of the Property to Developer for the construction and operation of the Project to be entered into simultaneously with the closing of the construction loans for the Project (the “Ground Lease”);

WHEREAS, the Project shall consist of 110 apartments that shall be offered for rent to teachers and staff employed by certain schools and school districts as directed by various funding sources for the Project, with one unit reserved for a property manager;

WHEREAS, Meta Platforms, Inc. (formerly known as Facebook, Inc.) (“Meta”) has agreed to provide a \$25,000,000 grant (the “Meta Grant”) to be disbursed by the County to Developer for the construction of the Project in exchange for 32 units to be offered various teachers and staff of certain schools in southern San Mateo County;

WHEREAS, the County, the City of Palo Alto, and the following other school districts: Palo Alto Unified School District, Mountain View Whisman School District, Los Altos School District, Mountain View/Los Altos High School District, Foothill De Anza Community College District (the foregoing school districts, collectively with the District, the “School Districts”), have committed to providing substantial funding to Developer for the construction of the Project;

WHEREAS, the District desires to contribute \$600,000 (the “District Funds”) to development of the Project in exchange for the right to have up to 12 units in the Project offered for rent to teachers and staff employed by the District for approximately 55 years as more particularly set forth in the Covenants and Restrictions Affecting Real Property, a draft of which is attached hereto as Exhibit A (the “Regulatory Agreement”) and in the Resident Selection Criteria and Policies for Santa Clara County Participating School Districts, prepared by the Developer and approved by the District (the “Resident Selection Criteria”); and

WHEREAS, the County has agreed to collect the District Funds from the District and disburse the District Funds to the Developer for the construction of the Project, as provided in this Agreement.

NOW THEREFORE, in consideration of the recitals hereof and other mutual agreements, obligations and representations, the County and the District hereby agree as follows:

- 1) Transfer of District Funds. On or before the commencement of the term of

the Ground Lease (which date is anticipated to be April 2023), the District shall wire the District Funds to the County pursuant to the wire instructions set forth on Exhibit B attached.

2) Disbursement of District Funds. Acting as District agent and fiduciary, the County shall disburse the District Funds to the Developer for the construction of the Project from time to time in accordance with a “Disbursement Agreement” between the Developer and the County, the form of which is attached hereto as Exhibit C. The Disbursement Agreement shall be for the disbursement to the Developer of all the funds from the School Districts on a pro rata basis from each School District’s respective funds and funds shall be used by Developer solely for the purpose of constructing the Project. Prior to (or simultaneously with) any disbursement of District Funds, the following conditions shall be true and correct:

- a. Project Financing. Developer shall have closed on the financing of a construction loan with Bank of America or another reputable national lender and closed on other sources of debt and equity, including, but not limited to, the Meta Grant, the loans or grants from the County, the City of Palo Alto, and other School Districts, and any committed developer equity, such that the aggregate of the funds must at all times meet or exceed the Approved Project Budget (as defined in the Disbursement Agreement);
- b. Approvals. The Project shall have received all governmental and other approvals and permits necessary for the construction of the Project and approval of the Project by the Board of Supervisors of the County;
- c. Regulatory Agreement. An executed copy of the Regulatory Agreement has been recorded in the Official Records of the Office of the Clerk-Recorder of the County of Santa Clara. The county shall obtain the prior approval of the District for any material revision to the form of Regulatory Agreement attached as Exhibit A;
- d. Resident Selection Criteria. The Resident Selection Criteria shall have been finalized by the Developer and approved by the District. The Residential Selection Criteria shall, among other things, set forth the size and household income eligibility for the units available to the District’s employees. The Resident Selection Criteria may be amended from time to time by the Developer, provided, however, any material revision affecting the rights of the District in units allocated to the District shall require the approval of the District.
- e. Design. The Project shall be constructed in accordance with the plans and specifications approved by the County and all mitigation measures in the Mitigation Monitoring and Reporting Program adopted by the County. Developer shall provide written notice to and request prior written approval from the County

(which approval shall not be unreasonably withheld) of any change in the plans that would result in an increase or decrease in the cost of construction of the improvements in excess of \$50,000 individually and in excess of \$100,000 in aggregate in the County-approved Project budget; and

- f. Disbursement Agreement. The Disbursement Agreement shall be fully executed and in full force and effect; provided, however, the County may manage the disbursements from the Disbursement Agreement in the County's reasonable discretion provided the County does not allow any waivers of or variations to the requirements of the Disbursement Agreement which alter the Project in any material way or compromises the safety, quality or estimated completion date of the Project in a material way, without the consent of the District.
- 3) Miscellaneous.
- a. Starting with the end of the third full month after the closing of the construction loans for the Project until the completion of construction of the Project, County shall provide the District with quarterly reports on the financing and development of the Project.
  - b. California Law; Jurisdiction; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.
  - c. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties are materially altered or abridged by such invalidation, voiding or unenforceability.
  - d. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the parties with respect thereto.
  - e. Notices. All notices sent pursuant to this Agreement shall be made in writing, and sent to the parties at their respective addresses specified below. All such notices shall 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 shall 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 courier or (d) e-mail transmission, in which case

notice is effective when such transmission is confirmed; provided, however, in connection with e-mail transmission, the sender shall also send copy of the same notice using one of the methods set forth in (a), (b) or (c) above.

Notices to District shall be sent to:

Mountain View Whisman School District  
1400 Montecito Avenue  
Mountain View, CA 94043  
Attn.: Chief Business Officer

Notices to the County shall be sent to:

County of Santa Clara  
70 West Hedding Street  
San José, CA 95110  
Attn: CountyExecutive  
and Attn: County Counsel.

- f. Consequential Damages. Each party hereby waives all future claims against the other party for special, indirect, consequential or punitive damages.
- g. Waiver of Jury Trial. District and the County hereby mutually, knowingly, voluntarily and intentionally waive, to the fullest extent permitted by applicable law, the right to a trial by jury in respect of any claim based hereon, arising out of, under or in connection with this Agreement or any other documents contemplated to be executed in connection herewith or any course of conduct, course of dealing, statements (whether oral or written) or actions of any party. Each party certifies that no representative of the other party has represented, expressly or otherwise, that such party would not seek to enforce the foregoing waiver.
- h. Amendments. This Agreement may not be amended or modified except pursuant to an agreement or agreements in writing entered into by District and the County.
- i. Third-party Beneficiaries. This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity not a party to this Agreement.
- j. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the parties have fully executed this Agreement. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of this Agreement, or an electronically signed

agreement, has the same force and legal effect as the agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term “electronically signed agreement” means the agreement that is executed by applying an electronic signature using technology approved by the County.

- k. Acknowledgement of Risk; Return of Funds.
- i. The District acknowledges and agrees that providing the District Funds to the County does not guarantee the construction of the Project, and except for County’s compliance with the terms of this agreement, the County shall not be responsible for the completion of the Project or the return of any funds disbursed to Developer in accordance with this agreement; provided, however, that (i) the County shall not impede or delay the construction of the Project in its capacity as the owner of the Property and a lender to the Developer, and (ii) the County shall not disburse District Funds unless the requirements of Section 2 above are satisfied.
  - ii. Notwithstanding the proceeding, in the event the Project is not completed, the County shall make their best efforts to reclaim any District Funds advanced to Developer but not expended by Developer in furtherance of the Project and shall return to District any unexpended portion of the District Funds as set forth in Section 3.03 of the Disbursement Agreement.
  - iii. Although the District Funding is a grant of funds with no expectation of monetary investment return or payback requirement, in the event loans made by the County and the City of Palo Alto have fully paid during the term of the Regulatory Agreement, the Developer shall make distributions from residual receipts from the Project to the District, on a pro rata basis with the other School Districts, up to the total District Funds, and as may be further provided in the Disbursement Agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Funding Agreement as of the dates set forth below.

**County:**

**County of Santa Clara,**  
a political subdivision of the State of California

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

Consuelo Hernandez, Director,  
Office of Supportive Housing

Date: \_\_\_\_\_

**District:**

**Mountain View Whisman School District,** a  
California public school district

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Karen Willis, Deputy County Counsel

EXHIBIT A

Form of Covenants and Restrictions Affecting Real Property

[See attached]

EXHIBIT B

Wire Instructions



EXHIBIT C

Form of Disbursement Agreement

[See attached]