NYC HDC
NEW YORK CITY HOUSING DEVELOPMENT CORPORATION

MEMORANDUM

To: The Chairperson and Members

From: Eric Enderlin
President

Date: November 22, 2022

Subject: New York City Minority Business Enterprise Guaranty Facility

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I am pleased to recommend that the Members approve a partial top loss guaranty that will be a general obligation of the Corporation in an amount not to exceed $25 million, to participate in a $50 million construction loan guaranty facility (the "MBE Guaranty Facility" or the "Facility") with Goldman Sachs. The Facility will provide limited construction loan guaranties for developers certified as Minority Business Enterprises (MBEs) by a verifiable governmental or quasi-governmental certifying body. The MBE Guaranty Facility is an initiative being led by the New York City Department of Housing Preservation and Development ("HPD") to address structural challenges facing MBE developers by helping them secure the construction financing necessary to develop City-financed affordable housing projects. Goldman Sachs is expected to commit $25 million to the Facility. The Facility is expected to provide up to $50 million in guaranties, enabling approximately $500 million in private construction lending to MBEs. HDC's top loss position will represent up to 70% ($17.5 million) of HDC's $25 million commitment to the Facility. HDC's financial obligation will be supported by a financial commitment from HPD equal to the amount funded by HDC. The guaranty will further HDC's goals of creating and supporting affordable housing in New York City and facilitating more direct and meaningful opportunities for MBE developers to participate in the affordable housing development market. This memorandum will provide background to the proposal and a discussion of the economics, mechanics, and risks and mitigants.

Background

MBE developers of affordable housing have historically had difficulty securing construction loans because they are not able to meet the guaranty and liquidity requirements of commercial banks. To fill the guaranty and liquidity needs, these developers often form a partnership with larger firms that dilutes their ownership and decision making in their project, reduces their developer fees, and limits their ability to grow and take on more projects independently in the future. Recognizing this challenge, the MBE Guaranty Facility is being created to promote the participation and growth of MBE developers by acting as a limited backstop to the bank guaranties provided by the MBE developers.

The Facility is expected to provide a total of up to $50 million in backstop guaranties to MBE developers that meet the eligibility criteria described in the attached draft term sheet to develop affordable housing projects in New York City financed under existing loan programs offered by HDC and/or HPD. Each senior construction loan amount is expected to be $50 million or less. The Corporation expects that exceptions to the senior loan size will be considered on a case-by-case basis. The backstop guaranties will be offered only for the construction or development completion guaranty, the repayment guaranty, and the carry guaranty. The maximum amount of each backstop guaranty will be capped at 10% of the senior loan made to the MBE developer, unless otherwise approved by the unanimous agreement of the Facility's credit committee. Assuming a maximum senior loan size of $50 million, and a cap on the backstop guaranty of 10% of the senior loan, the Facility is expected to provide backstop guaranties for at least 10 projects, thus enabling as much as $500,000,000 in private construction lending to MBEs.

The goal is for the Facility to begin accepting applications in the first half of 2023 for a five-year origination period that can be extended upon mutual agreement of HDC, HPD and Goldman Sachs. Each backstop guaranty shall have a term that is co-terminus with the term of the applicable construction financing and shall be automatically extended with an extension of that construction financing.

Mechanics and Economics

The Members are being asked to authorize a guaranty and the use of up to $25 million of the Corporation's unrestricted reserves, if necessary, for the Guaranty Facility, of which up to 70% would occupy a top loss position The Facility will be unfunded unless there is a default on a project loan that results in a beneficiary of the MBE Facility Guaranty (i.e., a construction lender) calling on a backstop guaranty, at which point HDC will use its unrestricted reserves to fund the financial obligation under the MBE Guaranty Facility. Upon funding of a guaranty by HDC, pursuant to a Memorandum of Understanding described below, HPD will begin the process to repay HDC via a swap arrangement wherein HPD will grant funds to HDC for a future project so that HDC can decrease its subsidy by the amount funded for the guaranty. The Facility will also receive a commitment from Goldman Sachs in the amount of $25 million, pending approval by Goldman's credit department.

HDC is expected to enter into a facility agreement with Goldman Sachs that will establish the governance of the Facility, including the terms and conditions pertaining to the activities of the Facility's credit committee, and general decision making during the course of the effectiveness of each backstop guaranty, including, but not limited to, the exercise of remedies as it pertains to recovery of losses from an MBE developer in the event of a draw on an applicable backstop guaranty. The form of backstop guaranty that will be issued to each construction lender will be annexed to the facility agreement. A backstop guaranty will be released no later than the applicable project financing permanent conversion.

The determination to provide a backstop guaranty for an MBE developer will require unanimous approval from all of the members of the Credit Committee. The Credit Committee is expected to have a representative from HPD, HDC and Goldman Sachs. The documents pertaining to each backstop guaranty will be executed by the applicable parties at the time of the closing of each construction financing. The Facility is expected to be managed by one or more third-party managers to be agreed upon by HDC, HPD and Goldman Sachs.

The Corporation expects to enter into a risk share agreement with Goldman Sachs to allow each of Goldman and HDC to issue individual backstop guaranties for each construction financing. Pursuant to the risk share agreement, HDC would be expected to fund up to its top loss obligation that may be above its 50% guaranteed amount per construction financing but in no event above its top loss obligation or committed amount to the Facility.

Further details can be found in the attached draft MBE Guaranty Facility term sheet.

Risks and Risk Mitigation

The primary risks associated with the Facility are Top Loss Guaranty Risk, Developer Risk, and Repayment Risk. These risks and their mitigants are discussed below. The Facility Manager is expected to track commitments made by the Facility, collect and review all construction reports from the institutional lender's construction monitor, and generate quarterly reports on the status of all projects provided backstop guaranties by the Facility.

Top Loss Guaranty Risk
Of HDC's commitment, up to $17.5 million will occupy a top loss position. After a construction lender makes a demand on the guaranty provided by the project sponsor, if not funded within a specified period of time, the construction lender shall have the right to call on the Facility for such amount. HDC's top loss commitment is a condition for Goldman Sachs to commit $25 million to the Facility. If the maximum HDC top loss per project is exhausted, on any applicable project further draws on the Guaranty Facility with respect to such project shall be funded on proportional basis with Goldman Sachs.

It is expected that the top loss risk will be mitigated by careful selection of participating MBE developers by HDC, HPD and Goldman Sachs. In addition, as each backstop guaranty is issued by the Facility, HDC will set aside the full amount of HDC's obligation under each guaranty from the Corporation's reserves and invest such reserves pursuant to the Corporation's investment guidelines. Finally, HDC will enter into a Memorandum of Understanding with HPD to provide grant funding to HDC for one or more future projects in an amount equal to any future financial obligation that HDC may incur as a result of a project loan default and draw under the MBE Guaranty Facility.

Developer Risk

The Developers receiving the support of the Facility must be approved by HDC, HPD and Goldman, must have experience developing affordable housing with HPD and/or HDC, and must be in good standing with each agency. As part of the application process, developers need to submit a written request to participate in the Facility that includes a demonstration of need for a backstop guaranty, a project narrative, a pro forma, a letter of support from HPD indicating the project is in their pipeline, and documentation that establishes their net worth and liquidity.

Repayment Risk
In the event there is a draw on the backstop guaranty, the MBE developer is expected to repay all amounts funded by the Facility to the applicable construction lender and will guaranty any such payment. In addition, the obligation to repay amounts funded under the backstop guaranty will also be secured by a promissory note and mortgage encumbering the Project, and repayment will occur from net cash flow of the Project. In no event will a construction lender have a right to draw under a backstop guaranty for more than the capped amount of such backstop guaranty. Non-recourse carveout guaranties are not eligible for liquidity support via the backstop guaranty.

Fees

The Corporation would receive an upfront fee of $7,500 per project provided with a backstop guaranty, paid at the time of closing of the construction financing, and an ongoing fee of $5,000 per year per project until the backstop guaranty is released. In the case of a draw, the borrower is expected to be required to pay interest equal to 10.0% of the amount that is funded under the backstop guaranty, to be paid first to Goldman Sachs and then to HDC in the amount each had funded under the backstop guaranty, unless otherwise approved by the Facility's credit committee.

Action by Members

The Members are requested to approve a guaranty that will be a general obligation of the Corporation, and the use of the Corporation's unrestricted reserves, if necessary, to fund such guaranty, for the MBE Guaranty Facility in an amount not to exceed $25 million, of which up to $17.5 million will occupy a top loss position; the execution of a risk share agreement with Goldman Sachs; the issuance of individual guaranties to construction lenders; and the execution by an authorized Officer of the Corporation of related documents and any other documents necessary to accomplish this guaranty.

Attachments

A. Draft MBE Guaranty Facility Term Sheet for Initial Facility Participation

Attachment

NEW YORK CITY MINORITY BUSINESS ENTERPRISE GUARANTY FACILITY

November [ ], 2022

Proposed Term Sheet for Initial Facility Participation

This summary Term Sheet is provided for discussion purposes only and does not constitute a commitment unless and until the parties enter into fully executed definitive documentation. The terms contained herein are of a summary nature and are not all-inclusive.

SUMMARY:	The City of New York, acting through the New York City Department of Housing Preservation and Development ("HPD") and the NYC Housing Development Corporation ("HDC") will partner with Goldman Sachs ("Goldman Sachs") to create the New York City Minority Business Enterprise Guaranty Facility (the "Facility") to provide a backstop guaranty and liquidity facility (each, a "Backstop Guaranty") for minority developers (each a "Project Sponsor") that are required to provide guarantees in order to secure construction financing to develop affordable housing projects in New York City. The Facility will provide up to $50 million in guarantees, enabling approximately $500 million in private construction lending by Minority Business Enterprises. The borrower (each, a "Project Borrower") of each such construction financing (each a "Construction Financing") shall be managed day to day by the Project Sponsor. Each Backstop Guaranty will be provided only for the construction or development completion guaranty, the repayment guaranty (if applicable), and the carry guaranty (if applicable) and the maximum amount of each Backstop Guaranty will be set on a loan by loan basis.
PARTICIPANTS:	The Initial Facility Participants (herein after "Initial Participants") are Goldman Sachs and HDC. HDC's financial commitment will be financially supported by a financial commitment from HPD equal to the amount made available by HDC. The City reserves the ability to add participants to the Facility at a future date with such additional parties and at such terms as will be established at that time with the prior written consent of Goldman Sachs and HDC.
STRUCTURE:	Initial Participants will enter into a facility agreement pursuant to which governance of the Facility will be established and a form of the Backstop Guaranty that will be issued to each institutional lender (the "Construction Lender") providing financing to a Borrower will be annexed (the "Facility Agreement").
ELIGIBLE PROJECT SPONSORS:	A Project Sponsor will be considered eligible for obtaining a Backstop Guaranty from the Facility if they have a current certification as a Minority Business Enterprise from any certifying body and if they have the following experience: - Timely and on-budget completion of an affordable housing project that has provided the applicant the necessary experience to successfully complete the project for which a backstop guaranty is being considered. The Credit Committee (as hereinafter defined) will consider exceptions to the experience requirements on a case by case basis, as well as indications of support

	for a Project Sponsor from a potential Construction Lender. The experience and performance of the Project Sponsor's selected property manager and/or contractor may be taken into account as well. As part of the application process, the Project Sponsor will need to submit a statement of demonstrated need as described below. Applications will not be considered if it does not appear that a Backstop Guaranty from the Facility is required for a Project Borrower to obtain a loan from a Construction Lender.
ELIGIBLE PROJECT TYPES:	Projects eligible for the Backstop Guaranty to be issued pursuant to the Facility must be Affordable Housing Development Projects (as defined below) within the confines of New York City and in the HPD and/or HDC pipeline, with a maximum senior loan size of $50,000,000. Exceptions to the senior loan size will be considered on a case by case basis. Land acquisition loans for future development are ineligible for participation. The applicable project must be 100% owned and operated by the Project Sponsor; provided, however, that for low income housing tax credit projects, the Project Sponsor must own 100% of, and operate, the managing member or general partner of the Project Borrower. "Affordable Housing Development Projects" shall include new construction of rental projects including units with income restrictions that are acceptable to the Initial Participants with the intent of the parties being that the Facility is not intended for projects that take on market rate risk or material commercial property risk.
FACILITY MANAGER:	A third-party manager to be agreed by both of the Initial Participants (the "Facility Manager"). The Facility Manager shall be paid out of the budget for each applicable Project.
GOVERNANCE:	A credit committee will convene for each proposed transaction that will include one representative from each of the Initial Participants as well as one representative from HPD (the "Credit Committee"). The determination to provide a Backstop Guaranty to a Project Sponsor will require unanimous agreement of all of the members of the Credit Committee. The Facility Agreement will set forth the terms and conditions pertaining to the activities of the Credit Committee, and general decision making during the course of the effectiveness of each Backstop Guaranty, including, but not limited to, exercise of remedies as it pertains to recovery of losses from a Project Sponsor in the event of a call on an applicable Backstop Guaranty. The Facility Agreement will also contain a construction review and management process to be agreed upon by the Initial Participants. This shall include, but not be limited to, each Project's Construction Lender engaging a third party construction consultant to perform up-front and ongoing plan and cost reviews and making such reports available to the Initial Participants for their reliance. In addition, it is

	anticipated that the Initial Participants will engage a third party construction consultant (the "Facility Construction Consultant") to review the Project's Construction Lender's reports and provide pre-closing and monthly updates to the Initial Participants, the cost of which will be paid from the construction budget for the applicable Project.
ISSUANCE OF GUARANTEES:	Facility Manager will review applications from potential projects and Project Sponsors to determine eligibility based on criteria listed below. Applications shall consist of a written request to participate in the Facility from the Project Sponsor that includes a demonstration of need for a Backstop Guaranty, a project narrative, a pro forma, a letter of support from HPD and other subordinate lenders that indicate the ability to close within approximately six (6) months, and documentation that establishes the net worth and liquidity of the Project Sponsor (collectively, the "Application Package"). Upon receipt of a full Application Package and determination of eligibility by the Facility Manager, the Facility Manager will convene the Credit Committee. After approval by the Credit Committee, the Project Sponsor will be provided a term sheet, and the documents pertaining to the Backstop Guaranty which will be executed by the applicable parties at the time of the closing of the Construction Financing. It is anticipated that the documents pertaining to each Backstop Guaranty will include, but not be limited to the following: - Backstop Guaranty in the form annexed to the Facility Agreement updated for specific deal terms - Guaranty of the repayment to HDC and Goldman Sachs from the Project Sponsor of any amounts funded under the Backstop Guaranty - Promissory note [secured by a mortgage] securing any amounts paid under the Backstop Guaranty to the extent not reimbursed under the Project Sponsor guaranty as described above, and payable out of cash flow after all other secured debt of the Project Borrower
FACILITY SOURCES OF CAPITAL:	A portion of the HDC Top Loss (as hereinafter defined), the amount of such portion to be agreed upon by the Initial Participants in the definitive documents, will be pooled among the Projects (the "Pooled Portion") and GS shall have no obligation to fund its portion of the Facility unless and until the Pooled Portion has been fully expended by HDC. Any funding under a Backstop Guaranty will be only after same is called upon by the applicable Construction Lender for a Project.
TERMS FOR INITIAL PARTICIPANTS:	In the first round of Backstop Guaranties issued under the Facility, HDC and Goldman Sachs are expected to each make an initial commitment of $25,000,000, and each Initial Participant will guaranty 50% of any payout. $17.5 million of HDC's commitment will be a top-loss commitment (the "HDC Top Loss"). If the maximum HDC top loss per Construction Financing is exhausted, further draws on the Backstop Guaranty Facility shall be funded on a proportional basis relative to each

	Initial Participant's commitment and the priority of such commitment. The pooled nature of the HDC top loss will be as agreed upon by the parties in the definitive documentation. In order to implement the HDC Top Loss and retain the structure of HDC's and Goldman's respective 50% share of each Backstop Guaranty, HDC and Goldman are expected to enter into a risk share agreement, pursuant to which HDC would be expected to fund up to the HDC Top Loss that may be above its 50% guaranteed amount per construction financing but in no event above the HDC Top Loss or committed amount to the Facility.
ORIGINATION PERIOD:	Five years unless otherwise extended by the mutual agreement of the Initial Participants; provided, however, that each Backstop Guaranty shall have a term that is co-terminus with the term of the applicable Construction Financing and shall be automatically extended with an extension of said Construction Financing.
NATURE OF GUARANTY:	The Backstop Guaranty will be capped at 10% of the senior loan made to the Project Borrower, unless otherwise approved by the unanimous agreement of the Credit Committee. Each Backstop Guaranty will apply only to the construction or development completion guaranty, the repayment guaranty (if applicable), and the carry guaranty (if applicable), for a term that is co-terminus with the term of the applicable Construction Financing and shall be automatically extended with an extension of said Construction Financing. The obligations under the Backstop Guaranty will be several, not 'joint and several,' obligations of the HDC and Goldmans Sachs as to their respective fifty percent (50%) shares of the Backstop Guaranty taking into account the top-loss structure. The applicable Project Sponsor is expected to provide guarantees to the Construction Lender and if the Construction Lender makes a demand on said guaranty that is not funded within 60 days of such demand, the Construction Lender shall have the right to call the Backstop Guaranty for such amount. In no event will a Construction Lender have a right to draw under a Backstop Guaranty more than the capped amount of such Backstop Guaranty. Nonrecourse carveout guarantees are not eligible for liquidity support via the Backstop Guaranty. In the event a guaranty is called upon, Project Sponsor is expected to repay all amounts funded by HDC and/or Goldman Sachs to the applicable Construction Lender and will guaranty any such payment. In addition, the obligation to repay amounts funded under the Backstop Guaranty will also be secured by a promissory note and mortgage encumbering the Project Borrower, and funding will occur from net cash flow of the Project Borrower, prior to any payment of developer fee.
GUARANTY FEE:	Upfront Fee: The upfront fee will be equal to $7,500 plus 0.5% of the amount of Backstop Guaranty, paid at closing of the Construction Financing out of funds capitalized in the budget for the Construction Financing. Of the upfront fee, $7,500 will be paid to HDC and .5% of the amount of the Backstop Guaranty will be paid to GS. Ongoing Fee: The ongoing fee will be equal to $5,000 plus 0.625% of the amount of

	the Backstop Guaranty per annum until the Backstop Guaranty is released. The ongoing fees shall be paid $5,000 to HDC and 0.625% of the amount of the Backstop Guaranty will be paid to GS, all to be paid quarterly in advance and will be budgeted in the budget for the Construction Financing; provided, that if the amount so budgeted is depleted that will not obviate the Project Sponsor's and Project Borrower's. Drawn Fee: 10.0% of the amount that is funded under the Backstop Guaranty.
PROJECT LOAN UNDERWRITING STANDARDS:	The Project associated with the loan must meet standard HPD or HDC underwriting criteria.
REPORTING:	The Facility Manager will track commitments made on an annual basis and make that information available to Initial Participants.
GOVERNING LAW:	New York law shall govern this Term Sheet and the definitive documentation, if any, for the Facility.