



Island City Development

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701 Atlantic Avenue | Alameda, CA 94501

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# **REQUEST FOR PROPOSALS (RFP) FOR POPPY PLACE ROOFING AND/OR SOLAR (PV)**

**Issued: August 16, 2023**

**ICD Webster LLC  
Island City Development  
701 Atlantic Avenue  
Alameda, CA 94501**

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## INTRODUCTION

The Housing Authority of the City of Alameda ("AHA") is a public body corporate and politic that was formed in 1940 to provide housing assistance to low-income families within the City of Alameda. The AHA is headed by an Executive Director (ED) and is governed by a seven-person Board of Commissioners and is subject to the requirements of Title 24 of the Code of Federal Regulations ("CFR"), Housing Authorities Law (Part 2 of Division 24 of the California Health and Safety Code commencing with Section 34200 et seq.), other U.S. Department of Housing and Urban Development ("HUD") rules and regulations, and ICD's Procurement Policy.

The AHA has two affiliates, Alameda Affordable Housing Corporation (AAHC) and Island City Development (ICD) and several limited partnerships. Unless otherwise stated, this solicitation is for all ICD affiliated entities.

Currently, the AHA has an Annual Contributions Contract to administer 1885 tenant-based Housing Choice Vouchers, which includes 338 Project-Based Vouchers and allocations for the Family Unification Program (FUP), the Veterans Affairs Supportive Housing (VASH), the Non-Elderly Disabled (NED), and Family Self-Sufficiency (FSS) programs.

The AHA is also tasked with housing at least 14 Shelter-Plus Care Vouchers and 30 Moderate Rehabilitation households. The AHA does not operate any Public Housing units. The AHA currently owns units but is transitioning ownership of those approximately 570 units to the Alameda Affordable Housing Corporation (AAHC), an affiliate of the AHA. The AHA manages 251 units while the remainder of the portfolio with ICD and AAHC are managed by a 3<sup>rd</sup>-party management company. The AHA currently has approximately 55 employees.

The Housing Authority of the City of Alameda, in partnership with the entire community, advocates and provides quality, affordable, safe housing; encourages self-sufficiency; and strengthens community inclusiveness and diversity in housing.

Island City Development (ICD) and its affiliate ICD Webster LLC, is soliciting and accepting proposals from qualified, licensed, and insured consultants or companies, demonstrating their qualifications, past performance and interest for this work. The term "Proposer" used herein shall mean proposers, partnerships, corporations, associations, or professional organizations.

Details regarding this Request for Proposals, specifications, and submittal requirements are set forth in this RFP document and any attachments or amendments to it, which can also be accessed online at [www.alamedahsg.org/working\\_with\\_us/business\\_opportunities](http://www.alamedahsg.org/working_with_us/business_opportunities). Proposals made in response to this solicitation must conform to all of the required specifications outlined within this document and any designated attachments or amendments in their entirety.

(Continued on Next Page)

**RFP INFORMATION AT A GLANCE**

<b>ICD CONTACT PERSON ("RFP MANAGER" OR "RM"):</b>	Joseph Nagel, Construction Project Manager E-MAIL: <a href="mailto:jnagel@alamedahsg.org">jnagel@alamedahsg.org</a> PHONE: (510) 747-4340
<b>HOW TO OBTAIN THE RFP DOCUMENTS:</b>	ONLINE AT: <a href="http://www.islandcitydevelopment.org/procurements/">www.islandcitydevelopment.org/procurements/</a> OR VIA E-MAIL FROM THE ICD CONTACT PERSON LISTED ABOVE.
<b>DEADLINES FOR SUBMITTING QUESTIONS AND REQUEST FOR INTERPRETATIONS (RFI) INCLUDING ANY MODIFICATIONS TO CONTRACT LANGUAGE OR SCOPE OF SERVICE:</b>	<b>August 30, 2023, AT 4:00 PM.</b>  <b>RESPONSES TO QUESTIONS WILL BE POSTED ON THE ICD WEBSITE WITHIN FOUR (4) BUSINESS DAYS.</b>
<b>HOW TO FULLY RESPOND TO THIS RFP BY SUBMITTING A PROPOSAL:</b>	PER INSTRUCTIONS WITHIN SECTION 4.0 OF THIS RFP DOCUMENT, SUBMIT ONE (1) ORIGINAL ELECTRONIC PROPOSAL TO ICD BY THE DUE DATE.
<b>PROPOSAL SUBMITTAL RETURN LOCATION AND DEADLINE:</b>	<b>September 15, 2023, AT 4:00 P.M.</b> PROPOSALS SHALL BE SUBMITTED ELECTRONICALLY BY THE DUE DATE TO <a href="mailto:jnagel@alamedahsg.org">jnagel@alamedahsg.org</a>
<b>NOTE: ICD reserves the right to deviate from this timeline and/or modify the Scope of Service at any time.</b>	<b>NOTICES OF ANY SUCH DECISIONS OR MODIFICATIONS WILL BE LOCATED AT:</b> <a href="http://www.islandcitydevelopment.org/procurements/">www.islandcitydevelopment.org/procurements/</a>

## 1.0 ICD'S RESERVATION OF RIGHTS.

- 1.1. **Right to Reject, Waive or Terminate the RFP.** The ICD reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, in its sole and absolute discretion, if deemed by the ICD to be in its best interests.
- 1.2. **Right Not to Award.** The ICD reserves the right not to award a contract pursuant to this RFP.
- 1.3. **Right to Terminate.** The ICD reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 5 business day's written notice to the successful Proposer(s).
- 1.4. **Right to Determine Time and Location.** The ICD reserves the right to determine the days, hours and locations that the successful Proposer shall provide services called for in this RFP.
- 1.5. **Right to Determine Financial Responsibility and Viability.** The ICD reserves the right to require of each Proposer, information regarding financial responsibility and viability or such other information as the ICD determines is necessary to ascertain whether a proposal is in fact the lowest responsive and responsible proposal submitted.
- 1.6. **Right to Retain Written Proposals.** The ICD reserves the right to retain all written proposals submitted to ICD by all Proposers in response to this RFP, and not permit the withdrawal of same for a period of 60 calendar days subsequent to the deadline for receiving said proposals. The ICD may permit the withdrawal of proposals if requested in writing by the Proposer and such request is approved in writing by the RFP Manager for this RFP in his/her sole and absolute discretion.
- 1.7. **Right to Negotiate Fees.** The ICD reserves the right to negotiate the fees proposed by the successful Proposer.
- 1.8. **No Obligation to Compensate.** The ICD shall have no obligation to compensate any Proposer for any costs incurred in responding to this RFP.
- 1.9. **Right to Amend Prior to Award.** The ICD reserves the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued. All addenda will be posted on the ICD's website [www.islandcitydevelopment.org/](http://www.islandcitydevelopment.org/) ("System"). Such changes that are issued before the bid submission deadline shall be binding upon all prospective bidders. ICD also reserves the right to amend the form of standard ICD contract any time prior to contract execution.

**1.10. Right to Reject Any Proposal.** The ICD reserves the right, in its sole discretion, to reject and not consider any proposal that does not meet the requirements of this RFP, including but not limited to untimely, or incomplete proposals or proposals offering alternate or non-requested services.

**1.11. Right to Prohibit Further Participation.** The ICD shall reserve the right, at any time during the RFP or contract process, to prohibit any further participation by a Proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. By accessing the System and downloading this document, each Proposer is thereby agreeing to abide by all terms and conditions listed within this document and within the System; provided however, in the event a Proposer disagrees with any of the terms contained in this RFP, a Proposer shall have the right to notify the RM in writing within 5 business days of the discovery of any item listed herein or of any item that is issued thereafter by the ICD and ask for clarification or revision. If the RM agrees, the clarification or revision can be addressed in an addendum. Failure to abide by this time frame shall relieve the ICD, but not the Proposer, of any responsibility pertaining to such issue.

**1.12. Public Disclosure of Proposal Documents.** To the extent applicable, documents submitted in connection with this RFP may be subject to disclosure pursuant to the California Public Records Act (California Government Code Section 6250 et seq.).

## **2.0 GENERAL/ TECHNICAL SPECIFICATIONS.**

The Housing Authority of the City of Alameda (ICD) is seeking proposals from qualified Proposers to provide the services listed in the scope of work set forth in Exhibit "D", attached hereto.

**2.1. Proposed Term.** ICD anticipates that the proposed term for the proposed service will be for a period of three (6) months.

**2.2. Number of Proposers to be Selected.** The ICD will choose one (1) or more successful Proposers to provide the services contemplated in this RFP.

**2.3. Funding.** The work to be performed upon successful award of this RFP will be funded with state and federal funds.

**2.4. Federal Requirements.** The scope of work to be performed shall be subject to the Federal requirements set forth in Exhibit "F", attached hereto.

**2.5. Form of Contract.** By responding to this RFP and submitting a proposal, the Proposer acknowledges and agrees that in connection with this RFP,

ICD may only execute a contract prepared by ICD, which is substantially approved as to form and substance by ICD. As provided further within Section 6.0 herein, the ICD WILL NOT normally execute the successful Proposer's contract form; the contract will **normally** be executed on the ICD's form only (please see Attachment B), and all specifications listed within the subject ICD contract will generally be the same specifications listed within the Scope of Services in Section 3.0. Any Proposer that does not feel that these listed specifications are reasonable or complete shall address such with the ICD in writing at the time Proposer submits its proposal in accordance with the posted submittal deadline. Once the proposal deadline has passed, the proposer cannot request additional changes. ICD may consider, in its sole discretion, all or a portion a Proposer's alternative contract form, provided such proposed alternative contract form is submitted to ICD as part of Proposer's timely proposal response.

- 2.6. Submittal Deadline.** The ICD must receive proposals by **4:00 PM, Friday, September 15, 2023**. Proposals must be submitted via email to: [jnagel@alamedahsg.org](mailto:jnagel@alamedahsg.org) with a copy to: [sraskin@alamedahsg.org](mailto:sraskin@alamedahsg.org). Proposals submitted after the deadline indicated above and/or via an alternate delivery method other than email will not be accepted.
- 2.7. Proposal Review.** The Evaluation Committee, appointed by ICD's Executive Director or designee, will review, evaluate, rank, and select the proposals according to the scoring criteria outlined in the RFP, ICD's Procurement Policy, and HUD regulations.
- 2.8. Award.** Proposals that meet the requirements outlined in this RFP will be evaluated and ranked according to the rating and selection factors described in Section 5 below. A ranking list will be prepared according to points awarded to each proposal. The proposal scoring the highest points will be conditionally awarded the contract, pending ICD Board of Commissioners approval, if required. ICD may, in its sole and absolute discretion, select none of the proposals submitted. ICD reserves the right to postpone or cancel the final award of the proposals at its convenience.

### **3.0 SCOPE OF SERVICES.**

All Proposers are asked to describe the tasks required to successfully carry out the Scope of Services outlined in ATTACHMENT "D", attached hereto. However, Proposer's may include additional services that the Proposer is capable of providing and which, in the Proposer's opinion, would enhance the implementation of the proposed Scope of Services. Proposers must provide pricing for any additional services presented in the proposal. Pricing for all five (5) years must be included in the proposal, including any increases, broken down by year.

### **4.0 PROPOSAL FORMAT.**



## 4.0 PROPOSAL FORMAT

**4.1. Proposal Submittal.** All proposals submitted in response to this RFP must be formatted in accordance with the numbered sequence noted below. None of the proposed services may conflict with any requirement the ICD has published herein or has issued by addendum. Each proposal should include sections addressing the following information in the order shown. The Proposer should be sure to include all information that it feels will enable the Evaluation Committee to make a decision. Failure of the Proposer to provide specific, detailed information may result in its proposal being rejected in favor of a sufficiently detailed proposal. Any necessary exhibits or other information, including information not specifically requested by this RFP but that the Proposer believes would be helpful, should be attached at the end of the proposal. The party submitting the materials should keep in mind the limitations on confidential information described in Subsection 1.12.

### Part 1 - Proposal Submittal Checklist:

The Form of Proposal Submittal Checklist is attached as Attachment A to this RFP and incorporated herein by this reference. This one-page form must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal.

### Part 2 – Form of Proposal:

The Form of Proposal is attached as Attachment B to this RFP and incorporated herein by this reference. This one-page form must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal.

### Part 3 – Profile of Proposer:

The Form of Profile of Proposer is attached as Attachment C to this RFP and incorporated herein by this reference. This 3-page form must be fully completed, executed, and submitted under this section as a part of the proposal submittal.

### Part 4 – Cover Letter:

Provide a one-page cover letter on your letterhead that includes the address, telephone numbers, and e-mail address of the Proposer's contact person or persons. List the name and title of each person authorized to represent the Proposer in negotiations.

### Part 5 – Qualifications and Experience:

Provide a statement of qualifications for your organization, a statement of the size of Proposer, a description of services provided by your

organization, and a statement of the extent of experience/history providing the services requested by this RFP.

1. How many full-time employees (FTEs) do you plan to assign to this project if you are selected?
2. How many people in total are employed by your company? Delineate between employees and consultants.
3. If applicable, submit a resume or curriculum vitae for each such individual if the resume/CV includes all the requested information.

#### Part 6 – Proposed Approach:

This section describes your proposed approach for meeting the Scope of Services required, as listed above. Relevant considerations include the quality and feasibility of your approach to meeting these needs, the manner in which you plan to provide adequate staffing (if applicable), and equipment or other resources provided by you (if applicable). Keep these considerations in mind as you respond to the following:

1. Describe how you will fulfill the needs described in this RFP. Attach a project plan, if appropriate.
2. Identify how you will meet all other aspects of the Scope of Services and related requirements stated above. List any items that you cannot provide.

#### Part 7 – Customer Service:

1. In the event of a problem, who is to be contacted within your organization?
2. In the event of the identification of a problem by the ICD, describe how you will address such problems and the timeframe for addressing them.

#### Part 8 – Cost Analysis and Budget for Primary Services:

1. Provide an itemized budget and a detailed explanation for all costs associated with providing the requested services, including but not limited to:
  - A. Itemize and provide a proposal of costs detailed in Attachment D the Scope of Services.

**RESPONDENTS MAY CHOOSE TO RESPOND TO ALL OR AT LEAST ONE OF THE SCOPE OF SERVICE ITEMS**

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- B. Is travel time to other required locations expected to be billable? If so, how will travel time invoices be calculated? Generally, proposals that do not include travel time or expenses are preferred unless the services requested require travel as part of the service. Travel must be in compliance with ICD's Travel procedures, included as Attachment F.
- C. Include start-up costs, if any.

## Part 9 – References:

List at least three (3) business references for which you have recently provided similar services. Include contact names, titles, phone numbers and e-mail addresses for all references provided. One reference should be from a client or prevailing wage consultant that can speak to prevailing wage experience.

## Part 10 – Other Company Information (Optional):

## Part 11 – Conflict of Interest Information

Proposer must include confirmation of submission of online form. Form can be found at: <https://form.alamedahsg.org/Forms/A4Gpo>.

**If no information is to be placed under any of the above noted Sections (especially the "Optional" section), please place thereunder a statement such as "NO INFORMATION IS BEING PLACED UNDER THIS SECTION" or "THIS SECTION LEFT INTENTIONALLY BLANK." DO NOT eliminate any of the sections.**

Unless the Proposer is an individual, all proposals must be signed with a proposer/company/partnership/entity name and by a responsible officer or employee indicating that officer or employee's authorization to commit the Proposer to the terms of the proposal. Obligations assumed by such signature must be fulfilled.

- 4.2. Organization of Submitted Materials.** Proposers must submit one (1) original electronic proposal via email with the following guidelines: All proposals must be submitted electronically by the designated due date to [jnagel@alamedahsg.org](mailto:jnagel@alamedahsg.org) with a copy to [sraskin@alamedahsg.org](mailto:sraskin@alamedahsg.org). The subject line must denote the following: "PPRFP08162023-1". The body of the e-mail must have the Proposer's name and return address. Proposals received after the published deadline will not be accepted.
- 4.3. Submission Conditions.** Proposers are not allowed to change any requirements or forms contained herein, either by making or entering onto these documents or the documents submitted any revisions or additions; and if any such additional marks, notations or requirements are entered on any of the document that are submitted to the ICD by the Proposer, such may invalidate that proposal. If, after accepting such a proposal, the ICD decides that any such entry has not changed the intent of the proposal that the ICD intended to receive, the ICD may accept the proposal and the proposal shall be considered by the ICD as if those additional marks, notations or requirements were not entered on such. By accessing the noted System, registering and downloading these documents, each prospective Proposer that does so is thereby agreeing to confirm all notices that the ICD delivers to them as instructed, and by submitting a proposal, the Proposer is thereby agreeing to abide by all

terms and conditions published herein and by addendum pertaining to this RFP.

- 4.4. Submission Responsibilities.** It shall be the responsibility of each Proposer to be aware of and to abide by all dates, times, conditions, requirements, and specifications set forth within all applicable documents issued by the ICD, including but not limited to this RFP. By virtue of completing, signing, and submitting the completed documents, the Proposer is stating their agreement to comply with all conditions and requirements set forth within the aforementioned documents.
- 4.5. Supportive Documents.** By signing the Proposal Submittal Checklist form attached hereto as Attachment A, the Proposer is affirming that they agree to provide any documentation requested by the ICD upon notification of award under this RFP to ensure compliance with applicable requirements. Proposers may be asked to submit additional information to help facilitate the proposal review. If the ICD finds that a proposal is non-responsive or non-compliant with this RFP, written selection criteria and/or procedures, or applicable regulations, it will be rejected and returned to the Proposer with notification stating the reason for rejection. The ICD reserves the right to reject proposals at any time for misinformation, errors, or omissions of any kind, no matter how far they have been processed, in its sole and absolute discretion.
- 4.6. Proprietary Information.** To the extent not prohibited by applicable law, if a Proposer does not desire certain proprietary information in their proposal disclosed, the Proposer is required to identify all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If the Proposer fails to identify its proprietary information, it agrees by submission of its proposal that those sections shall be deemed non-proprietary and may be made available upon public request after a contract award. Notwithstanding anything to the contrary contained herein, any proposals and documents received in connection with this RFP may be subject to disclosure pursuant to the California Public Records Act (Government Code Section 6250 et seq.)
- 4.7. Eligible to Conduct Business in California.:** All proposers shall be eligible to conduct business in the State of California and City of Alameda.
- 4.8. Proposer's Responsibilities--Contact with the ICD:** It is the responsibility of the Proposer to address all communication and correspondence pertaining to this RFP process to the RM only. Proposers must not make inquiry or communicate with any other ICD staff member or official (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for the ICD to not consider a proposal submittal received from any Proposer who may have not abided by this directive.

**4.9. Addenda:** All questions and requests for information must be addressed in writing to the RM. The RM will respond to all such inquiries in writing by addendum to all prospective Proposers (i.e., proposers or individuals that have obtained the RFP Documents). During the RFP solicitation process, ICD staff will NOT conduct any *ex parte* (a substantive conversation, “substantive” meaning, when decisions pertaining to the RFP are made, between the ICD and a prospective Proposer when other prospective Proposers are not present) conversations that may give one prospective Proposer an advantage over other prospective Proposers.

**4.10. Recap of Attachments and Exhibits.** It is the responsibility of each Proposer to verify that they have downloaded the following attachments and exhibits pertaining to this RFP, each of which are hereby incorporated herein by this reference:

<b>Attachment /Exhibit</b>	<b>Description</b>
<b>A</b>	Proposal Submittal Checklist
<b>B</b>	Form of Proposal
<b>C</b>	Form of Profile of Proposer
<b>D</b>	Scope of Services
<b>E</b>	Sample ICD Contract (Note: This contract is being given as a sample only. ICD reserves the right to revise any clause herein and/or to include within the ensuing contract any additional clauses that are in its best interests)
<b>F</b>	Travel Accommodations Expense Requirements-Consultants
<b>G</b>	Additional Federal Requirements
<b>H</b>	If HUD funded, the HUD Forms 5369-A (Certification and Representation of Offerors Non-Construction), 5369-B (Instructions to Offerors Non-Construction) / [5369 Instructions for Bidders for Contracts (Construction)]
<b>I</b>	Conflict of Interest Information

## 5.0 PROPOSAL EVALUATION.

**5.1. Evaluation Factors.** The following factors will be utilized by the ICD to evaluate each proposal received; award of points for each listed factor will be based upon the documentation that the Proposer submits within their proposal:

A. **Qualifications and Experience:**

Maximum Points: 30

As indicated under Part 5, the Proposer's qualifications and prior experience, including capability and experience of its key personnel, including their resumes and history of successfully performing similar services for public or private agencies.

B. **Proposed Approach:**

Maximum Points: 25

As indicated under Part 6, the Proposer's proposed approach to conducting the Scope of Work as noted in Attachment D, including clarity of understanding of the scope of services to be provided and appropriateness of the proposed solution/services, as well as the ability to meet any required timelines or other requirements. The ability to commence work within 30 calendar days of accepting the contract and completing the work no later than 98 calendar days after commencing the work is preferred.

C. **Customer Service:**

Maximum Points: 10

As indicated under Part 7, the Proposer's approach to customer service and coordination with the ICD.

D. **Cost Analysis and Budget for Primary Services:**

Maximum Points: 10

As indicated under Part 8, the Proposer's itemized budget and a detailed explanation for all costs associated with providing the requested services and an itemized proposal of costs.

E. **References:**

Maximum Points: 10

As indicated under Part 9, a comprehensive list of the Proposer's references for other public and private entities that it has provided these same or similar services, and that ICD may contact, the result of which will be verified and scored accordingly by the ICD.

F. **Lowest Overall Price:**

Maximum Points: 15

The Proposer with the lowest overall cost for the primary services described by this RFP will receive the maximum amount of points and the next highest Proposers will each receive a percentage thereafter.

**5.2. Evaluation Method.**

- A. **Initial Evaluation for Responsiveness.** Each proposal received will first be evaluated for responsiveness (e.g., meets the minimum of the published requirements). The ICD reserves the right to reject any proposals deemed by the ICD not minimally responsive (the ICD will notify such proposers in writing of any such rejection).
- B. **Evaluation Packet for Proposals Deemed Responsive:** Internally, an evaluation packet will be prepared for each evaluator, including the following documents: Score Sheet for each Proposer and a copy of all pertinent RFP documents.
- C. **Evaluation Committee:** The ICD anticipates that the ICD's Executive Director or designee will select a minimum of a three-person committee to evaluate each of the responsive proposals submitted in response to this RFP ("Evaluation Committee"). PLEASE NOTE: No Proposer shall be informed at any time during or after the RFP process as to the identity of any Evaluation Committee member. If, by chance, a Proposer does become aware of the identity of such person(s), he/she SHALL NOT make any attempt to contact or discuss with such person anything related to this RFP. As detailed within this RFP, the designated RM is the only person at the ICD that the Proposers shall contact pertaining to this RFP. Failure to abide by this requirement may cause such Proposer(s) to be eliminated from consideration for award.



- D. **Evaluation:** The selection criteria set forth in Section 5.1 herein will be used by ICD to rank and select proposals for this RFP. Each criterion is comprised of several components with an associated point value. The total points awarded to a proposal will be the aggregate of the component subtotals for each factor. This selection provides both a summary and details of the factors and point values.
- E. **Potential "Competitive Range" or "Best and Finals" Negotiations:** The ICD reserves the right to, as detailed within Section 7.2.N through Section 7.2.R of HUD Procurement Handbook 7460.8 REV 2 ("HUD Procurement Handbook"), conduct a "Best and Finals" Negotiation, which may include oral interviews, with all proposers deemed to be in the competitive range. Any proposer deemed not to be in the competitive range shall be notified of such in writing by the ICD in a timely manner as possible, but in any case, no longer than 5 days after the beginning of such negotiations with the proposers deemed to be in the competitive range. The HUD Procurement Handbook can be accessed at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/pihh/74608](https://www.hud.gov/program_offices/administration/hudclips/handbooks/pihh/74608).
- F. **Ties/Equal Bids:** In the case of a tie in points awarded, the award shall be decided as detailed within Section 6.12.C of HUD Procurement Handbook 7460.8 REV 2, by "drawing lots or other random means of selection."
- G. **Results of Evaluation:** Once an award is made, Proposers may request via e-mail additional information regarding the results. Requests for records are limited to those that are not privileged or confidential (i.e., no successful bidder trade secrets, financials, etcetera.)
- H. **Proposal Protest:** Any prospective or actual Proposer, who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. To be eligible to file a protest with the ICD pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (e.g., submitted an interest form, proposal, or questions, or attended a pre-bid meeting) when the alleged situation occurred. The alleged aggrieved protestant must file, in writing, to ICD the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the ICD or condition is being protested as inequitable, making where appropriate specific reference to the

RFP documents issued and including the specific citation of law, rule, regulation, or procedure upon which the protest is based. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve ICD from any responsibility to take any corrective action, and as a result of noncompliance, the appeal will be dismissed without further review. The ICD has no obligation to consider a protest filed by any party that does not meet these criteria. Any protest against a solicitation must be received before the due date for the receipt of proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the successful Proposer receives notice of the contract award, or the protest will not be considered. All proposal protests shall be in writing, submitted to the RFP Manager or designee. The ICD's Executive Director, or designee, shall issue a written decision on the matter. The ICD's Executive Director, or designee, may, at his/her sole discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant. All appeals shall be submitted as outlined in Section 6.0.

## 6.1 APPEALS

- 6.2 Submission.** All appeals shall be marked as follows and sent via e-mail the address listed below.

SUBJECT LINE: "APPEAL OF RFP PPRFP08162023-1".

EMAIL TO: [jnagel@alamedahsq.org](mailto:jnagel@alamedahsq.org) with a copy to [sraskin@alamedahsq.org](mailto:sraskin@alamedahsq.org)

- 6.3 Conflict of Interest.** All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a Proposer entity will be excluded from participation on the ICD Evaluation Committee. Similarly, all persons having ownership interest in and/or who contract with a Proposer entity will be excluded from participation on the ICD Evaluation Committee.

## 7.0 CONTRACT AWARD.

- 7.1. Contract Award Procedure.** If a contract is awarded pursuant to this RFP, the following detailed procedures will be followed:

By completing, executing and submitting the Form of Proposal (Attachment B), the Proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the ICD, in hard copy, including an agreement to execute the standard ICD contract form. Accordingly, the ICD has no responsibility to conduct after the submittal deadline any negotiations pertaining to the contract clauses contained therein. In

addition, the ICD shall not negotiate any clauses contained within any applicable HUD documents.

Depending on the amount of the award, the ICD will forward the contract or a summary to ICD's Board of Commissioners for review and approval/disapproval, in their sole and absolute discretion, prior to signing the contract with the selected Proposer.

The contract shall be awarded subject to a resolution or minute order to that effect duly adopted by the Board of Commissioners, in their sole and absolute discretion, if approval is needed. Execution of the contract documents shall constitute a written memorial thereof.

If the amount of award does not require review or approval by the ICD's Board of Commissioners, then the contract will be executed by the Executive Director or Designee.

**7.2. Contract Conditions.** The following provisions are considered mandatory conditions of any contract award made by the ICD pursuant to this RFP:

- A. **Contract Form:** The ICD will not normally execute a contract on the successful Proposer's form (see Section 2.5). Contracts will only be executed on the ICD's form (please see the Sample Contract under Attachment E), and by submitting a proposal the successful Proposer agrees to do so (please note that the ICD reserves the right to amend the ICD Sample Contract form as the ICD deems necessary). **Please note that the ICD has no legal right or ability to (and will not) at any time negotiate any clauses contained within ANY of the HUD forms included as a part of this RFP.**
- B. **Assignment of Personnel:** The ICD shall retain the right to demand and receive a change in personnel assigned to the work performed pursuant to this RFP and the contract if the ICD believes that such change is in the best interest of the ICD and the completion of the contracted work.
- C. **Unauthorized Sub-Contracting Prohibited:** The successful Proposer shall not assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of ICD's Executive Director or designee, in his/her sole and absolute discretion. Any purported assignment of interest or delegation of duty, without the prior written consent of ICD's Executive Director or designee, shall be void and may result in the cancellation of the contract with the ICD, or may result in the full or partial forfeiture of funds paid to the successful Proposer as a result

of the proposed contract; as determined by ICD's Executive Director or designee, in his/her sole and absolute discretion.

D. **Contract Period:** The ICD anticipates that it will initially award a contract for the period of three (3) years with the option, at the ICD's discretion, of two (2) additional one-year option periods, for a maximum total of five (5) years.

E. **Insurance Requirements:** Prior to any individual contract award (but not as a **part** of the proposal submission) the successful Proposer will be required to provide the following during the term of the contract:

(1) **Insurance:** Consultant shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, its agents, representatives, employees, or subcontractors.

i. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. For consultants interacting with the public or with tenants, coverage must include coverage for discrimination, harassment, and fair housing claims under DFEH and HUD.

ii. **Automobile Liability:** ISO Form Number CA 00 01 coverage any auto (Code 1), or if Consultant has no owned autos, hired (Code 8) and non-owned autos (Code 9) with limit no less than \$1 million for bodily injury and property damage. This requirement does not apply if no motor vehicles are used in providing services under the contract.

iii. **Workers' Compensation:** As required by the State of California, with Statutory Limits and Employers' Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. This requirement does not apply to sole proprietors.

- iv. **Professional Liability (Errors and Omissions):**  
Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 in the aggregate. For consultants interacting with the public or with tenants, coverage must include coverage against discrimination, harassment, and fair housing claims under DFEH and HUD. If coverage is provided on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; insurance must be maintained, and evidence of coverage must be provided for at least five (5) years after completion of the contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- v. **IF APPLICABLE: Cyber Liability Insurance:**  
Coverage is required if the vendor/consultant is accessing, collecting, storing, or transferring Personally identifiable Information or medical information on staff, tenant, applicants etc.). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines, and penalties as well as credit monitoring expenses with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. This requirement does not apply if the consultant will not be accessing or storing ICD data subject to privacy regulations under Federal or state law, including but not limited to PII, PCI, and PHI, providing software, or accessing ICD information technology systems.

- vi. **IF APPLICABLE: Technology Professional Liability:** Coverage is required if the vendor/consultant is providing software or technology services (data storage, website design, etc.). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not be limited to, claims involving media liability and infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, security and privacy liability that include invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits no less than \$2,000,000 per occurrence or claim, \$4,000,000 in the aggregate. For consultants interacting with the public or with tenants, coverage must include coverage against discrimination, harassment, and fair housing claims under DFEH and HUD. If coverage is provided on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; insurance must be maintained, and evidence of coverage must be provided for at least five (5) years after completion of the contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
1. The Policy shall include or be endorsed to include property damage liability coverage for damage to, alteration of, loss of, or destruction of the electronic data and/or information "property" of the ICD in the care, custody, or control of the Consultant. If not covered under the Consultant's liability policy, such "property coverage of the ICD may be endorsed onto the Consultants Cyber Liability Policy as follows:

2. Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, destruction of electronic data and/or information "property" of the ICD that will be in the Care, custody, or control of Consultant.

If the consultant maintains broader coverage and/or higher limits than the minimums shown above, ICD requires and shall be entitled to the broader coverage and/or the higher limits maintained by the consultant. The insurance limits required by ICD are not represented as being sufficient to protect Consultant. Consultant is advised to consult Consultant's insurance broker to determine adequate coverage for Consultant.

- (2) **Additional Insured Status:** The Housing Authority of the City of Alameda and its affiliates, Alameda Affordable Housing Corporation and Island City Development and its Subsidiaries, and their departments, their respective directors, officers, Boards of Commissioners, employees, designated volunteers, elected or appointed officials, (ICD), are to be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.
- (3) **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects ICD, its officers, officials, Board of Commissioners, employees, and volunteers. Any insurance or self-insurance maintained by ICD, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it.
- (4) **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 days' notice to ICD.

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- (5) **Self-Insured Retentions:** Self-insured retentions must be declared and approved by ICD. ICD may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or ICD.
- (6) **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ICD.
- (7) **Verification of Coverage:** Consultant shall furnish ICD with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. ICD reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time
- (8) **Subcontractors:** Consultant shall pass down the insurance obligations contained herein to all tiers of subcontractors working under the contract.
- (9) **Notification of claims:** The Proposer agrees to notify ICD in writing of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of the contract as soon as practicable, but no later than three (3) business days after their first knowledge of such claim or event.
- (10) **Special Risks or Circumstance:** ICD reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.

F. If applicable, a copy of the Proposer's license issued by the State of California licensing authority allowing the Proposer to provide the services detailed herein.



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G. All Proposers shall be eligible to conduct business in the State of California and the City of Alameda and shall provide evidence of such eligibility if requested by ICD.

**7.3. Right to Negotiate Final Fees.** The ICD shall retain the right to negotiate the amount of fees that are paid to the successful Proposer, meaning the fees proposed by the top-rated Proposer may, at the ICD's discretion, be the basis for the beginning of negotiations. Such negotiations shall begin after the ICD has chosen a top-rated Proposer. If such negotiations are not, in the opinion of the RM successfully concluded within 5 business days, the ICD shall retain the right to end such negotiations and begin negotiations with the next-rated Proposer. The ICD shall also retain the right to negotiate with and make an award to more than one Proposer, as long as such negotiation(s) and/or award(s) are addressed in the above manner (i.e., top-rated first, then next-rated following until a successful negotiation is reached).

**7.4 Contract Service Standards.** All work performed pursuant to this RFP must conform and comply with all applicable local, state and federal codes, statutes, laws and regulations.

**7.5. Attachments.** Each of the attachments and exhibits attached hereto are incorporated herein by this reference.

Authorization to Distribute:

DocuSigned by:

*Sylvia Martinez*

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8/16/2023

Vanessa Cooper, Executive Director

Date

**ATTACHMENT A****“Proposal Submittal Checklist”**

**(This Form must be fully completed and placed under Part No. 1 of the proposal)**

**Instructions:** Unless otherwise specifically required, the items listed below must be completed and included in the proposal. Please complete this form by marking an “X,” where provided, to verify that the referenced completed form or information has been included within the “hard copy” proposal submitted by the Proposer. Also, complete the Proposer’s Statement as noted below:

<b>X = ITEM INCLUDED</b>	<b>SUBMITTAL ITEMS</b>
	<b>Part 1 Proposal Submittal Checklist (Attachment A)</b>
	<b>Part 2 Form of Proposal (Attachment B)</b>
	<b>Part 3 Profile of Proposer Form (Attachment C)</b>
	<b>Part 4 Cover Letter</b>
	<b>Part 5 Qualifications and Experience</b>
	<b>Part 6 Proposed Approach</b>
	<b>Part 7 Customer Service</b>
	<b>Part 8 Cost Analysis and Budget for Primary Services</b>
	<b>Part 9 References</b>
	<b>Part 10 Other Company Information (Optional)</b>
	<b>Part 11 Confirmation of submission Conflict of Interest Form (Attachment I)</b>

**PROPOSER'S STATEMENT**

The undersigned Proposer hereby states that by completing and submitting this form and all other documents within this proposal, they are verifying that all information provided herein is, to the best of their knowledge, true and accurate, and that if the ICD discovers that any information entered herein to be false, such shall entitle the ICD to not consider or make award or to cancel any award with the undersigned party.

Further, by completing and submitting the proposal, the undersigned Proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the ICD, including an agreement to execute the ICD Sample Contract, attached to this RFP as Attachment D. In addition, Proposer hereby agrees to provide any additional documentation requested by the ICD upon notification of award under this RFP to ensure compliance with applicable requirements. Proposers may be asked to submit additional information to help facilitate the proposal review.

Pursuant to all RFP documents, this Form of Proposal, and all attachments, and pursuant to all completed documents submitted, including these forms and all attachments, the undersigned proposes to supply the ICD with the services described herein for the fee(s) entered herein.

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**Signature****Date****Printed Name/Title****Company**

**ATTACHMENT B****FORM OF PROPOSAL**

**(This Form must be fully completed and placed under Part 2 of the proposal submittal.)**

- A. Form:** Each Proposer shall submit their proposed fees on this form only, which shall be completed, signed, and returned to the ICD with the completed Proposal.
- B. Entry of Proposed Fees:** Each Proposer must enter the proposed fees for each of the following Pricing Items where provided. Such fees shall be all-inclusive of all related costs that the Proposer will incur to provide the listed services, including, but not limited to (unless otherwise stated herein): sales tax, employee wages and benefits; clerical support; overhead; profit; licensing; insurance; materials; supplies; tools; equipment; long distance telephone calls; document copying; etc. "No Proposal" is not allowed for any item, although a "No Charge" is allowed for one or more of the Pricing Items.
- C. Pricing Items:** [Example pricing table below – include pricing information across every year in the proposed contract term, recurring fixed, variable, and hourly fees as applicable including space for additional services that may fall within the scope but not itemized]

QTY	U/M	Description	Fee FY23-24
1	Each	Proposer-fixed Fee (including all expenses), ICD Scope I - Interior Tenant Improvements	\$
1	Each	Proposer-fixed Fee (including all expenses), ICD Scope II – Common Area Solar PV	\$
1	Each	Proposer-fixed Fee (including all expenses), ICD Scope III – Roof Replacement	\$
1	Each	Propose –fixed Fee (including all expenses), ICD Scope IV – Low voltage/communication	\$
20	Hours	Proposer's Hourly Fee (for additional work that the ICD will require the successful Proposer to provide <i>that is not otherwise stated herein</i> )	\$
		TOTAL OF ALL FEES/COSTS	\$

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 Date

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 Company

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Print Name	Signature
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Office Phone	Mobile Phone	Email
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ATTACHMENT C

“PROFILE OF PROPOSER”

(This Form must be fully completed and placed under Part No.3 of the proposal submittal.)

- (1) Prime ☐ Subcontractor ☐ (this form must be completed by and for each)
- (2) Name of Proposer: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_
- (3) Street Address, City, State, Zip: \_\_\_\_\_
- (4) **Please attach a brief biography/resume of the company**, including the following information:  
Year Proposer Established; (b) Former Name and Year Established (if applicable); and  
(c) Name of Parent Company and Date Acquired (if applicable).
- (5) Identify Principals/Partners in Proposer (submit under Part 5 a brief professional resume for each):

NAME	TITLE	% OF OWNERSHIP

- (6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Part 5 a brief resume for each. (Do not duplicate any resumes required above):

NAME	TITLE

- (7) Federal Tax ID No.: \_\_\_\_\_
- (8) State of California Business Entity Number (Secretary of State): \_\_\_\_\_
- (9) Worker’s Compensation Insurance Carrier: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

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(10) General Liability Insurance Carrier: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(11) Professional Liability Insurance Carrier: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(12) Has your proposer or any member of your proposer been a part to litigation with a public entity?

☐ Yes ☐ No

If yes, please include in section a full detailed explanation including dates, with who and state the circumstances and any resolution.

(13) Is your proposer currently involved in local, County, State, Federal mortgage foreclosure proceedings or currently 90 days in arrears on a local public or private loan?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

(14) Is your proposer currently in foreclosure or substantial tax arrears with a City/County or local jurisdiction?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

(15) Has, or is this proposer or any member of your proposer, currently in default on any contract obligation or agreement of any kind entered into with a City/County or local public agency?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

(16) In the past 10 years, has your proposer or any member of your proposer failed to qualify as a responsible bidder, or refused to enter into a contract after an award has been made, privately or with any government agency?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

(17) In the last 7 years, has your proposer filed a bankruptcy petition or been the subject of involuntary bankruptcy proceedings?

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☐ Yes

☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.



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- (18) In the last 10 years, failed to file any required tax returns, or failed to pay any applicable Federal, State of California, or City of Alameda or other fees?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

- (19) Does your proposer or any member of your proposer have a record of substantial Building Code Violations or litigation against properties owned by the proposer or by any entity or individual that comprises the Proposer?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

- (20) Has your proposer or any member of your proposer been convicted for fraud, bribery, or grand larceny?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

- (21) Debarred Statement: Has this proposer, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of California, or any local government agency within or without the State of California? Has this proposer been de-designated as a developer of any government sponsored or publicly assisted project?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

- (22) Disclosure Statement: Does this proposer or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the ICD?

☐ Yes ☐ No

If yes, please include clarifying information including dates, with who and state the circumstances and any resolution in section (23) below.

- (23) Additional clarifying information regarding questions and statements (12) through (22) – include below and/or attach related documents:

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(24) Non-Collusive Affidavit: The undersigned party submitting this bid hereby certifies that such bid is genuine and not collusive and that said bidder entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other bidder or to secure any advantage against the ICD or any person interested in the proposed contract; and that all statements in said bid are true.

(25) Verification Statement: The undersigned bidder hereby states that by completing and submitting this bid he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the ICD discovers that any information entered herein is false, that shall entitle the ICD to not consider nor make award or to cancel any award with the undersigned party.

Signature:

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Printed Name:

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Title:

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Company:

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Date:

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## **ATTCHMENT D**

### **“Scope of Services”**

#### **Poppy Place All Scopes of Work:**

**This is a rehabilitation on a property that consists of occupied rental apartments.**

**All crews must adhere to all applicable mandated Covid protocols in place at the time of repairs.**

**Scheduled repairs also must be coordinated with on-site property management to properly notify the residents of impending work.**

1. Contractor to obtain any permits required.
2. All materials must be approved thru a formal submittal process prior to ordering.
3. Demo specified structures and dispose of all existing material at an appropriate facility.
4. Install new material per drawings and contract documents.
5. Contractor to clean up work area daily.
6. Contractor to store and secure material, tools and all other equipment in approved "lay down/storage" area daily.

#### **Scope I: Roofing**

### **Poppy Place Roof Scope**

#### **Overlay Option MA-CBMA-EX-W**

- 1 Properly prepare existing roof for new roofing system. Confirm existing components of the existing roof assembly. Conduct moisture survey of entire roof area. Remove and replace any wet, damaged, or deteriorated materials. Submit results of the survey to IB Roof Systems, prior to installation, for analysis.
- 2 Install one (1) layer of ¼” Securock Glass Mat Roof Board mechanically fastened to the steel deck using Deckfast or IB #14 HD Fastener and IB 3” Insulation Plates
- 3 Install any required sloping to achieve 3/8" per foot slope to existing drain locations as shown on drawings.
- 4 Install new IB PVC Single-Ply 80 roof system per manufacturers specifications.
- 5 New roof must have a minimum 3 year contractor warranty and a minimum 20-year manufacturer warranty.
- 6 Install all new stack/vent flashings, curb flashings, roof drains and guards, corners, and parapet wall caps.
- 7 Coordinate the roof work with the owners rep and for other contractors to remove and reinstall any existing equipment or mechanical devices.
- 8 Install all new caps at mechanical curbs (heat pumps).
- 9 Please see IB Assembly Letter for additional details

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**Tear Off Option MA-CBMAIN LL-W**

- 1 Remove and dispose of existing flat roof material.
- 2 Inspect for any water damage to the existing structure (any required repairs will be additional cost).
- 3 Install any required sloping to achieve 3/8" per foot slope to existing drain locations as shown on drawings.
- 4 Install new IB PVC Single-Ply 80 roof system per manufacturers specifications.
- 5 New roof must have a minimum 3 year contractor warranty and a minimum 20-year manufacturer warranty.
- 6 Install all new stack/vent flashings, curb flashings, roof drains and guards, corners, and parapet wall caps.
- 7 Coordinate the roof work with the owners rep and for other contractors to remove and reinstall any existing equipment or mechanical devices.
- 8 Install all new caps at mechanical curbs (heat pumps).
- 9 Please see IB Assembly Letter for additional details

**Scope II: PV Solar**

**POPPY PLACE PV SOLAR**

- 1 Contractor to design, supply and install new Photovoltaic system at the Poppy Place Apartments, 50 Residential units and ground floor offices located at 1628 Webster St. Alameda Ca. 95401
- 2 This property is being converted from use as a tourist hotel to full occupancy apartments 50 residential units plus business offices.
- 3 The existing electrical usage is expected to increase due to the additional full residential occupancy demand.
- 4 The new system shall include battery backup storage.
- 5 General: The scope of work for the new systems include engineering, permitting, procurement, construction, and commissioning, supervision, materials and supplies, labor, tools, construction equipment and machinery, utilities and transportation for the proper execution and completion of a fully integrated and operational System. Contractor shall perform, supervise and direct the Work in accordance with Industry Standards, Applicable Law and Project Milestone dates.
- 6 Contractor and Manufacturer shall provide a 25-year performance warranty or performance output warranty to include 100% of repair or replacement costs of defective equipment or component(s), including labor and shipping.

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**ATTACHMENT E**

**“Sample ICD Contract” (Behind  
this Page)**

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**ISLAND CITY DEVELOPMENT  
CONSTRUCTION SERVICES AGREEMENT  
ADMINISTRATIVE COVER SHEET**

**TO BE REMOVED UPON COMPLETION AND PRIOR TO EXECUTION**

**CHECKLIST OF INFORMATION NEEDED TO COMPLETE CONTRACT**

_____	Date of Agreement, Page 1, first paragraph
_____	Full legal name of Contractor, Page 1, first paragraph
_____	Contractor legal entity type, Page 1 first paragraph (i.e., "a California corporation" or "a California limited liability company")
_____	Date Owner selected Contractor, Recital B
_____	Full legal name and entity type of Contactor, Section 1.2(j)
_____	License number of Contractor, Section 2.3
_____	Date for commencement of work, Section 2.8(b)
_____	Guaranteed Maximum Price, Section 3.1(a)
_____	Daily liquidated damages amount, Section 4.3(d)
_____	Name and contact information for Contractor representative, Section 7.8(a)
_____	Name and address for Contractor, Section 7.9
_____	Contractor signature block (full legal name and entity type-must match Page 1)

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**ISLAND CITY DEVELOPMENT**  
**CONSTRUCTION SERVICES AGREEMENT**

This Construction Services Agreement (this "Agreement") is entered into as of [\_\_\_\_], 2023 (the "Effective Date"), by and between the Island City Development, a California nonprofit public benefit corporation ("Owner"), and [\_\_\_\_], a [\_\_\_\_] ("Contractor," and together with Owner, collectively, the "Parties"), with reference to the following facts:

**RECITALS**

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. On \_\_\_\_\_ 2023, Owner issued the RFP for the Work. Thereafter, on [\_\_\_\_], 2023, Owner selected Contractor to perform the Work in accordance with the RFP.

C. Contractor has represented to Owner that Contractor has the necessary skill and expertise to perform the Work.

D. The Parties wish to enter into this Agreement to memorialize their agreement as to the specific requirements regarding the renovation and modernization project at the Property.

NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1**  
**PURPOSE: DEFINITIONS**

Section 1.1 Purpose.

The purpose of this Agreement is to authorize Contractor to take actions necessary to perform the Work on the Property. Contractor hereby agrees to perform the Work in compliance with the terms and conditions of this Agreement, within the time periods provided by the Schedule, and for the costs set forth on the Contractor Schedule of Values.

Section 1.2 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.2 wherever used in this Agreement, unless otherwise provided:

- (a) "Acceptance Certificate" shall have the mean set forth in Section 2.9(b) of this Agreement.



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(b) "Agreement" shall mean this Construction Services Agreement and all exhibits.

(c) "Application for Payment" shall have the meaning set forth in Section 3.3(b) of this Agreement.

(d) "Authority" shall mean the Housing Authority of the City of Alameda, a public body, corporate and politic, its successors and assigns.

(e) "Change Order" shall have the meaning set forth in Section 2.11 of this Agreement.

(f) "City" shall mean the City of Alameda, California.

(g) "Contract Documents" shall mean this Agreement (including all exhibits attached hereto), the General Conditions, and the Plans.

(h) "Contracting Officer" shall have the meaning set forth in Section 5.7 of this Agreement.

(i) "Contractor" shall mean [\_\_\_\_\_], a [\_\_\_\_\_].

(j) "Contract Sum" shall have the meaning set forth in Section 3.1(a) of this Agreement.

(k) "Contract Time" shall have the meaning set forth in Section 2.9(b) of this Agreement.

(l) "Cost of the Work" shall mean the costs and expenses incurred by, or on behalf of, Contractor in connection with the performance of the Work, as more particularly described in Section 3.1 of this Agreement.

(m) "DIR" shall mean the State of California Department of Industrial Relations

(n) "Effective Date" shall have the meaning set forth in the first paragraph of this Agreement.

(o) "General Conditions" shall mean Form HUD-5370 (11/20/2023), General Conditions for Construction Contract, attached to this Agreement as Exhibit E.

(p) "Guaranteed Maximum Price" shall have the meaning set forth in Section 3.1(a) of this Agreement.

(q) "HUD" shall mean the United States Department of Housing and Urban Development.

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- (r) "Notice to Proceed" shall mean the notice to be issued by Owner to Contractor to establish the date for the commencement of the Work.
- (s) "Owner" shall mean Alameda Affordable Housing Corporation, a California nonprofit public benefit corporation, its successors and assigns.
- (t) "Parties" shall mean, collectively, Owner and Contractor.
- (u) "Party" shall mean either Owner or Contractor.
- (v) "Plans" shall mean the plans and specifications as set forth on Exhibit D.
- (w) "Potential Claimants" shall have the meaning set forth in Section 3.4(a)(iii) of this Agreement.
- (x) "Property" shall mean the real property located at 703 Atlantic Avenue, in the City of Alameda, County of Alameda, California, and commonly known as Independence Plaza, owned by Owner, on which Contractor shall perform the Work.
- (y) "Residential Tenants" shall have the meaning set forth in Section 2.7(a)(i) of this Agreement.
- (z) "Retention Amount" shall have the meaning set forth in Section 3.3(a) of this Agreement.
- (aa) "RFP" shall mean the Request for Proposals, issued by Owner on March 15, 2022, and the response of Contractor, dated [\_\_\_\_\_], 2022, each of which are attached to this Agreement as Exhibit L, and incorporated into this Agreement by this reference.
- (bb) "Schedule" shall mean the schedule for performance of the Work, attached to this Agreement as Exhibit K, as the Parties may revise from time to time, pursuant to a Change Order.
- (cc) "Section 3" shall mean Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations at 24 CFR Part 75.
- (dd) "Section 3 Certification" shall mean the certification of Contractor regarding Section 3 compliance, a form of which is attached to this Agreement as Exhibit I.
- (ee) "Section 3 Policy" shall mean the policy of the Authority for complying with Section 3, attached to this Agreement as Exhibit I.
- (ff) "Subcontractor" shall mean any subcontractor under direct contract with Contractor as more particularly described in Section 2.4(a) of this Agreement.

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(gg) "Substantial Completion" shall mean the stage in the progress of the Work where the work is sufficiently complete in accordance with this Agreement and all other Contract Documents so that the work may be utilized for its intended use as evidenced by the Acceptance Certificate.

(hh) "Work" shall mean, collectively: (i) certain balcony and guardrail replacement on the Property, as more particularly set forth in Exhibit A, and as set forth on the Plans; and (ii) all other construction and services required by the Contract Documents or reasonably inferable by Contractor as necessary to produce the results intended by the Contract Documents (including all labor, materials, equipment, and services provided or to be provided by Contractor to fulfill the obligations of Contractor).

### Section 1.3 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

<u>Exhibit A:</u>	Scope of Work
<u>Exhibit B:</u>	List of Subcontractors
<u>Exhibit C:</u>	Contractor Schedule of Values; Qualifications and Exclusions
<u>Exhibit D:</u>	List of Plans
<u>Exhibit E:</u>	General Conditions for Construction Contract (Form HUD-5370)
<u>Exhibit F:</u>	Insurance Requirements
<u>Exhibit G:</u>	Davis Bacon Wage Rates
<u>Exhibit H:</u>	AHA Section 3 Policy
<u>Exhibit I:</u>	Section 3 Certification
<u>Exhibit J:</u>	Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications
<u>Exhibit K:</u>	Schedule
<u>Exhibit L:</u>	Documents incorporated for reference from RFP

## **ARTICLE 2**

### **CONSTRUCTION SERVICES**

#### **Section 2.1 Scope of Work.**

Contractor shall perform the Work as set forth in the Plans provided to Contractor by Owner.

#### **Section 2.2 Responsibility for Performance of the Work.**

(a) **Contractor Responsibilities.** Contractor shall manage all activities associated with the performance of the Work in accordance with this Agreement, including, but not limited to, the following activities:

(i) In addition to the other requirements set forth herein, Contractor shall employ a full-time superintendent to be on the jobsite at all times during the progress of the Work. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Owner shall have the right to approve the superintendent. If Contractor removes the superintendent, Owner shall have the right to approve the replacement superintendent, which shall not be unreasonably denied.

(ii) Contractor shall conduct weekly job site meeting with the representative of Owner to keep Owner informed of the progress of the Work. Contractor shall provide Owner copies of minutes of any job site meetings.

(iii) Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

(iv) Subject to the obligation of Owner to disburse funds set forth in Section 3.3(c) of this Agreement, Contractor shall make, or cause to be made, payment of all monies due and legally owing to all persons doing any work, furnishing any materials or supplies, or renting any equipment to Contractor or any of its Subcontractors in connection with performance of the Work, within ten (10) calendar days following receipt of payment from Owner.

(v) Contractor shall be responsible to Owner for acts and omissions of employees of Contractor, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors and for any damages, losses, costs, expenses, including but not limited to attorneys' fees resulting from such acts and omissions. In accordance with Section 1810 of the California Labor Code, Contractor acknowledges that eight (8) hours of labor constitutes a legal day's work.

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In no event shall Contractor contract with any party which has been debarred or suspended by HUD under 29 CFR 5.12 or by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE). A current list of individuals the DLSE is available at <https://www.dir.ca.gov/dlse/debar.html>.

(b) Use of Site. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Property by Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Property. Contractor shall take reasonable precautions and measures to protect materials and equipment stored at the Property from weather, theft, and damage, and Contractor shall be solely liable for any loss or damage to such materials and equipment. Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such manner that public areas adjacent to the Property of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

### Section 2.3 Contractor Representations and Warranties.

(a) Representations and Warranties. Contractor represents and warrants the following to Owner (in addition to any other representations and warranties contained in this Agreement) as a material inducement to Owner to execute this Agreement:

(i) Contractor, and to the best of the knowledge of Contractor, its Subcontractors, are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

(ii) Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor itself or through its Subcontractors required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so;

(iii) Contractor is authorized to do business in the State of California and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over Contractor and over the Work. The license number of Contractor is [\_\_\_\_\_];

(iv) Execution of this Agreement by Contractor and performance thereof is within the duly authorized powers of Contractor;

(v) Contractor is a sophisticated contractor who possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular project, and will perform the Work with the care, skill, and diligence of such a contractor;

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(vi) Except as disclosed to Owner in writing, there are no claims, actions, investigations, suits, or proceedings pending affecting the performance of Contractor under the Contract Documents; and

(vii) All financial information delivered to Owner, including all information relating to the financial condition of Contractor or any of its partners, joint venturers, or members (as applicable), fairly and accurately represents the financial condition being reported on as of its date. All such information is prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted. There has been no material adverse change in the financial condition of any of the persons described above-reported at any time to Owner, except as previously disclosed to Owner in writing in later financial information and found acceptable to Owner in its sole and absolute discretion.

(b) Survival. The foregoing representations and warranties shall survive the execution and delivery of this Agreement and any termination of this Agreement.

#### Section 2.4 Subcontractors.

(a) List of Subcontractors. The list of approved Subcontractors of Contractor for the performance of the Work, and each of the license numbers of such Subcontractors, is set forth on Exhibit B. In the event Contractor desires to replace any Subcontractor pursuant to Section 4107 of the California Public Contract Code, then Contractor shall notify Owner in writing, and, Owner shall then follow the process set forth in Section 4107(a) of the California Public Contract Code. Thereafter, if requested by Owner in writing, Contractor shall provide Owner with a draft copy of its form subcontract, and disclose to Owner the name, trade, and subcontract amounts for each subcontractor prior to the proposed performance by subcontractor of any portion of the Work. Subcontractors shall have the required licenses and expertise necessary to perform the proposed subcontract work. Owner will promptly reply to Contractor in writing stating whether or not Owner, after due investigation, has reasonable objection to any such proposed person or entity. Provided Owner has not objected to the proposed subcontractor, such person or entity shall be deemed a "Subcontractor." Contractor shall not contract with a proposed person or entity to whom Owner has made reasonable and timely objection, or an entity that has been debarred by the DIR. If any contract between Contractor and a Subcontractor is materially altered so that it differs from the form subcontract provided to Owner with regard to terms other than (1) the description of the Work to be performed pursuant to the subcontract, and (2) the subcontract price, that subcontract shall be submitted to Owner for its review prior to the commencement of applicable portion of the Work.

(b) Subcontracts. By appropriate agreement Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to Contractor by terms of this Agreement and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the work of Subcontractors, which Contractor, by this Agreement, assumes toward Owner. Each subcontract shall, among other matters: (i) require that the work be performed in accordance with the requirements of this Agreement; (ii) require the Subcontractor to carry and maintain liability insurance in accordance with this Agreement; and, (iii) shall specifically provide that Owner is an intended third-party

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beneficiary of such subcontract and that the Subcontractor recognizes the rights of Owner to take an assignment of its subcontract after termination of this Agreement by Owner on default of Contractor.

Section 2.5 Payment and Performance Bonds.

Prior to commencement of the Work, Contractor shall deliver to Owner copies of labor and material (payment) bonds and performance (general contractor bond) bonds for the Work in an amount equal to one hundred percent (100%) of the scheduled costs of the Work. Said bonds shall comply with the requirements of Section 9550 et seq. of the California Civil Code and shall be issued by an insurance company which is licensed to do business in California and has a rating equivalent to AAA or AA+ by an insurance company listed in the current year's list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and for amounts which are not in excess of the acceptable amount set forth on such list for the respective surety. The bonds shall name Owner and Authority as co-obligees or assignees.

Section 2.6 Right of Entry; Job Site Facilities.

(a) Right of Entry. Owner hereby grants Contractor a right to enter the Property for the purpose of performing the Work. This right of entry may be exercised by Contractor, and its employees, agents, and Subcontractors. This right of entry will terminate upon the sooner to occur of: (i) completion of the Work; or (ii) the occurrence of an event of default under this Agreement.

(b) No Liens. Contractor and all Subcontractors and all material suppliers are prohibited from placing any liens on the Property; provided, however nothing in this Section 2.6(b) shall be deemed to prohibit the filing of a stop notice.

(c) Signs. Subject to prior approval of Owner as to size, design, type and location, and to local regulations, Contractor and its Subcontractors may erect temporary signs for purposes of identification and, to the extent applicable, controlling traffic. Contractor shall furnish, erect, and maintain such signs as may be required by safety regulations and as necessary to safeguard life and property. Contractor shall comply with all applicable CAL OSHA standards.

(d) Job Site Facilities. In addition to the requirements set forth in Section 17 of the General Conditions, Contractor may provide a jobsite trailer and portable sanitary facilities. This office will be located so as to cause no interference to any Work to be performed on the Property. Contractor shall consult with Owner with regard to location. Unless otherwise agreed to by the Parties, upon completion of the Work, Contractor shall remove all such temporary structures and facilities from the Property. On-site storage will be permitted, as a convenience to Contractor, in areas designated by Owner for such purposes. Contractor shall take reasonable security measures to protect against theft and vandalism. Contractor is responsible for tools and equipment owned by Contractor. Products at the Property, in storage or in transit shall be covered by the builder's risk policy, as further described in Section 7.19 of this

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Agreement, except for damage due to negligence or willful misconduct of Contractor, damage or vandalism to the Improvements. Contractor may, at its option and expense, rent off-site facilities for the storage and securing of its materials.

Section 2.7 Safety Precautions and Programs.

(a) Contractor Responsibility. In addition to the requirements set forth in Section 13 of the General Conditions, Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work and for providing safe conditions for the performance of the Work. Owner shall have no liability or responsibility for the physical condition or safety of the site, or any improvements made by Contractor and located on the Property until acceptance of the Work by Owner as evidenced by the Acceptance Certificate more particularly described in Section 2.9(b) of this Agreement. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(i) employees at the Property and other persons who may be affected thereby, including, but not limited to the tenants of the residential units located at the Property (collectively, the "Residential Tenants");

(ii) the materials and equipment to be used in connection with the performance of the Work, whether in storage on or off the site, under care, custody or control of Contractor or its Subcontractors or sub-subcontractors; and

(iii) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work.

(b) Residential Tenants. Contractor acknowledges that the Residential Tenants shall be occupying the portions of the Property above the portions of the Property where the Work will be performed. Contractor shall take all reasonable precautions to ensure that the Work is performed in such a manner so as not to endanger, threaten, or impair the safety of Residential Tenants or their guests and invitees, and shall construct and maintain reasonable safeguards as required by the condition and progress of the Work. Contractor shall take all reasonably available efforts to eliminate unnecessary noise, dust, or obstructions during the performance of the Work.

(c) Utilities. In the event that the performance of the Work requires existing utilities (including, but not limited to, water, heat, electricity, or telecommunications) to be shut-off, then Contractor shall not cause such utilities to be shut off until: (i) Contractor has notified Owner of such requirement, and (ii) Owner has notified the Residential Tenants of such requirement in accordance with the Residential Tenants' leases. In such event Contractor shall use commercially reasonable efforts to minimize the time period that any utility serving the Property is shut-off.



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(d) Notices. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(e) Explosives. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for performance of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Contractor shall also give Owner reasonable advance notice.

(f) Damage. Contractor shall promptly remedy damage and loss to property referred to in Sections 2.7(a)(ii) and (iii) above, to the extent caused by Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Sections 2.7(a)(ii) and (iii), except damage or loss attributable to acts or omissions of Owner and not attributable to the fault or negligence of Contractor.

(g) No Overloading. Contractor shall not load or permit any part of the Work or site to be loaded so as to endanger its safety.

(h) Suspension. When all or a portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and protect the Improvements, as necessary, from injury by any cause, including, but not limited to rain or other weather conditions.

(i) Notice to Owner. Contractor shall promptly report in writing to Owner all accidents arising out of or in connection with the Work that caused death, serious personal injury, or serious property damage (other than the demolition of any existing improvements on the Property as set forth in the Plans), giving full details and statements of any witnesses. In addition, if death, serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to Owner.

#### Section 2.8 Conditions Precedent to Commencement of the Work.

(a) Conditions. Contractor shall cause the commencement of Work by no later than the date set forth in a Notice to Proceed issued by Owner; provided, however, Owner shall not be under any obligation to issue a Notice to Proceed until satisfaction of the following conditions precedent:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(ii) Contractor has furnished Owner with evidence of the bonds meeting the requirements of Section 2.5 of this Agreement.

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(iii) Contractor has executed and delivered to Owner all documents, instruments, and policies required by Owner pursuant to this Agreement.

(iv) Contractor has furnished Owner with evidence of the insurance coverage meeting the requirements of Section 2.19 of this Agreement.

(v) Contractor has secured all necessary permits, fees and licenses as set forth in Section 2.12(a) of this Agreement.

(b) Termination. If Contractor has not satisfied the conditions precedent set forth in this Section 2.8 by the earlier of: (i) the date set forth in the Notice to Proceed; or (ii) [ \_\_\_\_\_ ], 2022, then such failure shall constitute a default as set forth in Section 4.2 of this Agreement, and Owner may, in its sole discretion, terminate this Agreement. In the event of such termination neither Party shall have any continuing liability or obligations except for continuing indemnities provided elsewhere in this Agreement. In the event of such termination, the Parties agree and acknowledge that, for the avoidance of doubt, Section 34 of the General Conditions shall not apply.

#### Section 2.9 Completion of the Work.

(a) Compliance with Schedule. Contractor shall perform the Work in strict accordance with the Schedule submitted to and accepted by Owner. Contractor shall have the sole and exclusive responsibility for completing the Work according to the Schedule. Failure to materially comply with the Schedule shall be considered a breach of this Agreement. Any proposed revisions to the Schedule which would affect Contract Time shall be submitted by Contractor pursuant to the Change Order procedure set forth in Section 2.11 of this Agreement. If Owner reasonably determines that the performance of the Work has not materially reached the level of completion set forth in the Schedule or the Contract Documents (taking into account any corrective schedule action(s) proposed by Contractor including, but not limited to, resequencing tasks or lags to obtain compliance with the Schedule), then Owner shall have the right to require Contractor to take all measures necessary to expedite the Work in order to materially comply with the Schedule including, but not limited to, working additional shifts or overtime, supplying additional labor, equipment, facilities, and other similar measures. The right of Owner to require such measures is solely for the purpose of ensuring the compliance of Contractor with the Schedule. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with such measures required by Owner. Owner may exercise the rights furnished in this Section 2.9(a) as frequently as Owner deems necessary to ensure that the performance of the Work by Contractor will comply with the Contract Time.

(b) Acceptance Certificate. Subject to Section 32(b) of the General Conditions, Contractor shall diligently prosecute the Work to completion, and shall cause the Substantial Completion of the Work as set forth in the Schedule, and within the time period established in Section 25 of the General Conditions (the "Contract Time"). Upon Substantial Completion of the Work, Contractor shall submit to Owner a certification stating that the Work has been completed in accordance with the Plans. Upon (1) submission of the certification, (2) inspection by Owner and a determination by Owner in its reasonable discretion Contractor

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has reached Substantial Completion in compliance with this Agreement, and (3) at the discretion of Owner, completion of an independent cost certification of the work to be prepared and paid for by Owner, Owner shall certify in writing that the Work is substantially complete by executing and recording against the Property a notice of completion and acceptance of work (the "Acceptance Certificate").

Section 2.10 Delay and Extension of Time.

(a) Delay. Except as set forth below, the occurrence of events that delay the Work shall not excuse Contractor from achieving Substantial Completion within the Contract Time. The Contract Time may be extended by Change Order for each calendar day Contractor is delayed in the commencement or progress of the Work provided that Contractor demonstrates that the following conditions have been met:

(i) At the time the event causing the delay commences, no event of default (as described in Section 4.2 of this Agreement) exists;

(ii) Contractor demonstrates that the delay will have a material adverse impact on the critical path of the then current Schedule;

(iii) The delay is not caused by Contractor;

(iv) The delay could not be (or have been) limited or avoided by timely notice by Contractor to Owner of the delay or reasonable likelihood that the delay would occur;

(v) The delay is of a duration of more than one calendar day; and

(vi) The delay is caused by one, or more, of the events or conditions set forth in Section 32(b)(1) of the General Conditions.

(b) Change Order. Provided that such conditions set forth above are satisfied, the Contract Time may be extended by Change Order as set forth in Section 2.11 of this Agreement.

Section 2.11 Change Orders.

Changes in the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement by Change Order, subject to the limitations stated in Section 29 of the General Conditions (each, a "Change Order"). Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time (if any). Contractor shall use the AIA Change Order form, or such other form of change order reasonably acceptable to Owner, and shall report requests for Change Orders and Change Order status monthly.

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Section 2.12 Work Pursuant to Permits, Plans and Laws.

(a) Permits. In accordance with Section 12(b) of the General Conditions, Contractor shall obtain, and pay all costs for, all applicable permits, licenses, and authorizations necessary for the Work. The Work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction over the Work.

(b) Plans and Laws. Contractor shall cause all the Work performed in connection with this Agreement to be performed in compliance with: (i) the Plans, as approved by the City Building Department, and all governmental approvals and permits; (ii) all applicable laws, ordinances, rules and regulations of federal, state, or municipal governments or agencies now in force or that may be enacted hereafter, including (without limitation and where applicable) prevailing wage provisions of the federal Davis-Bacon Act (as further set forth in Section 46 of the General Conditions), and its implementing rules and regulations, and the prevailing wage provisions of the Section 1720, et seq. of the California Labor Code; and (iii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. In accordance with Section 1104 of the California Public Contract Code, Contractor shall review the Contract Documents, and, in the event the Contractor discovers any error or omission in the Contract Documents with applicable codes, then Contractor shall promptly notify Owner of such error or omission.

(c) Davis-Bacon Wages and California Prevailing Wages; Payroll Compliance.

(i) The applicable Davis Bacon wage rates are attached to this Agreement as Exhibit G. A copy of the wage decision and any additional classifications shall be posted by Contractor at the Property in a prominent place readily accessible to the workers. Contractor shall and shall cause Subcontractors to pay the higher of: (1) the wages set forth in Exhibit G; or (2) prevailing wages in the performance of the Work as those wages are determined pursuant to Sections 1720 et seq. of the California Labor Code. Regardless of the payment of wages set forth in Exhibit G or pursuant to Sections 1720 et seq. of the California Labor Code, Contractor shall, and shall cause any Subcontractors to: (A) employ apprentices as required by Sections 1777.5 et seq. of the California Labor Code, and the implementing regulations of the DIR, and to comply with the other applicable provisions of Sections 1720 et seq. and Sections 1777.5 et seq. of the California Labor Code, and implementing regulations of the DIR; (B) keep and retain, and shall cause any Subcontractor to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Sections 1720 et seq. of the California Labor Code, and apprentices have been employed are required by Sections 1777.5 et seq. of the California Labor Code; (C) post at the Property the applicable prevailing rates of per diem wages (Copies of the currently applicable current per diem prevailing wages are available from the DIR); (D) register, and cause the Subcontractors rehabilitating the Property to be registered as set forth in Sections 1725.5 of the California Labor Code; (E) cause its Subcontractors, in all calls for bids, bidding materials and subcontract documents to specify that: (i) no subcontractor may be listed on a bid proposal nor be awarded a

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contract unless registered with the DIR pursuant to Sections 1725.5 of the California Labor Code; and (ii) the Work is subject to compliance monitoring and enforcement by the DIR; (F) provide Owner all information required by Sections 1773.3 of the California Labor Code, as set forth in the DIR's online form PWC-100 within two (2) calendar days after the Effective Date ; (G) post, or cause its Subcontractors to post job site notices, as prescribed by regulation by the DIR; and (H) cause its Subcontractors to furnish payroll records required by Sections 1776 of the California Labor Code directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(ii) Each Subcontractor and any lower tier subcontractor shall submit through Contractor to Owner weekly certified payrolls for each work week from the time work is started until the Work is completed setting forth, among other things, that each worker has been paid in accordance with Section 2.12(c)(i) of this Agreement. Weekly payrolls shall be completed and submitted promptly to Owner, preferably no later than seven (7) working days following completion of the work week. Monthly progress payments will not be released until all payroll reports are up to date. All workers are to be paid not less than once per week.

(d) Department of Labor Notification. Within ten (10) calendar days of contract award (including subcontracts) for each contract of Ten Thousand and No/100ths Dollars (\$10,000.00) or more, Owner is required to send a notice of contract award to the Regional Office of Federal Contract Compliance Programs of the Department of Labor. This notification is required by Executive Order 11246, as amended, and shall include the name, address, and telephone number of the contractor/subcontractor; the employer identification number; the dollar amount of the contract; the estimated start and completion dates; and the project number(s) and community in which the project(s) is located. The above information shall be submitted to Owner, by Contractor, within two (2) working days of receipt of such information as it applies to subcontractors.

#### Section 2.13 Right of Owner to Stop the Work.

If Contractor fails to correct defective work as required by Article 23 of the General Conditions or fails to carry out the Work in accordance with the Contract Documents, Owner by a written order signed by the Contracting Officer, may order Contractor to stop the Work or any portion thereof until the cause for such order has been eliminated.

#### Section 2.14 Right of Owner to Carry Out the Work.

If Contractor defaults or neglects to carry out the work in accordance with this Agreement and fails within seven (7) calendar days after receipt of written notice from Owner to commence and continue correction of such defects or neglect with diligence and promptness, Owner may, after seven (7) calendar days following receipt by Contractor of an additional written notice and without prejudice to any other remedy Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued, deducting from the payments then or thereafter due Contractor, the cost of correcting such deficiencies. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner.

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Section 2.15 Section 3 Compliance.

Contractor shall comply with Sections 38, 39, and 40 of the General Conditions regarding Section 3 and the requirements set forth in AHA Section 3 Policy.

Section 2.16 Equal Opportunity.

Contractor, for itself and its successors and assigns, and transferees agrees that in the performance of the Work it shall comply with the requirements of Section 39 of the General Conditions regarding Equal Employment Opportunity.

Section 2.17 Minority and Women-Owned Business Participation.

Attached to this Agreement as Exhibit J is the Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications. It is the policy of Owner to take positive steps to maximize the utilization of minority and women business enterprises in all contract activity administered by Owner.

Section 2.18 Hazardous Materials.

(a) Contractor Responsibility. Contractor shall not permit any hazardous material or substance to be brought to, or used on, the Property except to the extent such hazardous material or substance is necessary to and customarily used in the projects like the Work. Any hazardous material or substance brought or used on the Property by Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, shall be used, stored and disposed of in compliance with all applicable laws related to such hazardous materials or substances. Any damage to the Property and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Subcontractors or sub-subcontractors; and other property at the Property or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work, resulting from the improper storage or use of hazardous materials or substances, shall be remedied by Contractor at its sole cost and expense in accordance with applicable laws. Contractor shall provide Owner notice of any release of hazardous materials or substances at the Property. In no event, however, shall Owner have any responsibility for any substance or material that is brought to the Property by Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. Contractor agrees not to import any fill that are hazardous, toxic or made up of any items that are hazardous or toxic.

(b) Compliance with Laws. If the scope of work of Contractor include the off-haul or contaminated soil, hazardous materials (including asbestos) remediation, or mold remediation, then Contractor shall comply with the requirements of all applicable federal, state and local laws, and any environmental reports provided to Contractor by Owner, in the removal, transportation and disposal of the materials. Contractor shall obtain all necessary permits for any contaminated soil or hazardous materials or mold removal work. Contractor shall ensure that

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any Subcontractor performing any removal or remediation work possesses the necessary expertise, insurance and licenses. All contaminated and hazardous material shall be transported to an appropriately permitted facility. Contractor shall and shall cause any Subcontractors performing the removal and remediation work to take all necessary safety precautions during the performance of the Work including but not limited to necessary protection of surrounding areas to prevent the spread of contamination, and the protection of workers performing the removal and remediation work.

(c) Stop Work. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to polychlorinated biphenyl (PCB), but specifically excluding lead paint and asbestos (which remediation is contemplated as part of the Work), encountered on the Property by Contractor, Contractor shall, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to Owner in writing.

(d) Rendered Harmless. In the event hazardous materials or substances are found to be present, then Contractor shall take such actions necessary to render such materials or substances harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the reasonable additional costs of shut-down, delay and start-up of Contractor, which adjustments shall be accomplished pursuant to a Change Order; provided, however, Owner shall have no obligation to execute a Change Order for: (i) any hazardous materials or substances that were previously disclosed to Contractor, prior to the Effective Date; (ii) any condition that does not differ materially from those conditions disclosed to Contractor; or (iii) any hazardous materials or condition known by Contractor.

#### Section 2.19 Insurance Requirements.

Contractor shall, and shall cause any Subcontractors performing any portion of the Work to maintain insurance of the types described in Exhibit F. The requirements set forth in Exhibit F supersede those set forth in Section 36 of the General Conditions.

#### Section 2.20 Obligations of Contractor regarding Mechanic's Liens and Stop Notices.

(a) Obligation of Contractor to Maintain Lien-Free Title. Provided that Owner has made payment of undisputed sums due and payable in accordance with this Agreement, if any claim of mechanic's lien or stop notice is filed or made against the real property in connection with the Work, Contractor shall: (i) immediately pay and fully discharge the mechanic's lien or stop notice claim; (ii) commence a civil action pursuant to Sections 9350 et seq. of the California Civil Code, for the summary determination of the mechanic's lien or stop notice; or (iii) may deliver to Owner a release of lien or stop notice by surety bond in a legally sufficient form and amount to discharge the mechanic's lien or stop notice. Contractor shall provide whatever documentation, deposits or surety is reasonably required by the title insurance company providing title insurance on the Work in order to obtain lien-free endorsements prior to payment of any payment by Owner, including any progress payment. If Contractor fails to

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promptly provide the documentation, deposits, records of payment or surety bonds required by this Section 2.20(a), Owner may: (1) obtain any deposits or surety; or (2) make payments to claimants against the Work, Contractor, Owner, in good faith, as reasonably required to release the mechanic's lien or stop notice claim. Owner may withhold the cost of obtaining such deposits or surety or of making such payments from any payment that would otherwise be due to Contractor. Failure of Owner to withhold any or part of any payment pursuant to this Section 2.20(a) shall not be a waiver of any right of Owner under the Contract. Withholding of any payment or part of any payment by Owner pursuant to this Section 2.20(a) shall not be a breach of this Agreement.

(b) Withholding of Payments Due to Claims of Subcontractors. Provided that Owner has made payment of undisputed sums due and payable in accordance with this Agreement, if any subcontractor, material supplier to the Work, or lower tier subcontractor or material supplier files or serves any claim or lien, stop notice, common count or other demand for payment against Owner, or the real property of the Work, Owner may either (1) withhold from any progress payment or other payment an amount up to one hundred fifty percent (150%) of the amount necessary to satisfy the claim, stop notice, common count, or other demand for payment, including all anticipated costs and fees related to the defense of such claim, including but not limited to attorneys' fees, or (2) release the progress payment or other payment. Failure of Owner to withhold any or part of a progress payment pursuant to this Section 2.20(b) shall not be a waiver of any right of Owner under this Agreement. Withholding of any payment by Owner pursuant to this Section 2.20(b) shall not be a breach of this Agreement.

### **ARTICLE 3**

#### **PAYMENT AND RECORD KEEPING REQUIREMENTS**

##### **Section 3.1 Contract Sum; Guaranteed Maximum Price.**

(a) Contract Sum. Owner shall pay Contractor the Contract Sum in current funds for the performance of the Work by Contractor. The "Contract Sum" is the Cost of the Work as defined in this Article 3, plus the fee of Contractor. The Contract Sum is based on The Schedule of Values of Contractor, attached as Exhibit C to this Agreement and incorporated herein. The Schedule of Values of Contractor sets forth that the Contract Sum shall not exceed [\_\_\_\_\_] and No/100ths Dollars [(\$\_\_\_\_\_.00)] (the "Guaranteed Maximum Price"), subject to any change order approved in writing by Owner in accordance with this Agreement.

(b) Actual Costs of Contractor. Costs as defined herein shall be actual costs paid by Contractor. All payments made by Owner pursuant to this Article 3, whether those payments are actually made before or after the Effective Date, are included within the Guaranteed Maximum Price; provided, however, that in no event shall Owner be required to reimburse Contractor for any portion of the Cost of the Work incurred prior to the issuance of the Notice to Proceed unless Contractor has received the written consent of Owner prior to incurring such cost.



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(c) No Duplication of Payment. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 3 or elsewhere, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

Section 3.2 Conditions Precedent to Disbursement of Funds for the Work.

Owner shall not be obligated to make any payment to Contractor or take any other action under this Agreement unless the following conditions are satisfied prior to each such disbursement:

(a) No Default. There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(b) Payroll. Owner has received all payroll information required pursuant to Section 2.12(c) of this Agreement; provided, however, Owner shall withhold from any payment an amount proportionate to, or otherwise equal to, the missing payroll information. Owner shall not withhold the full amount of a payment due solely to the failure of Contractor to deliver complete payroll information.

(c) Approved Application for Payment. Owner has received, and approved, the Application for Payment in the form set forth in Section 3.3 of this Agreement.

(d) Lien Releases. If requested by Owner, Contractor has provided Owner with waiver and releases from all contractors, Subcontractors, and material persons in such form as is acceptable to Owner including conditional waivers from all persons for whose work in the preceding month payment is sought, and unconditional waiver and releases from all persons for whose work payment has been made by Owner (or bonded around by Contractor in the event of a dispute between Contractor and a Subcontractor) in response to the Application for Payment of Contractor.

Section 3.3 Application for Payment Process.

(a) Submittal of Application for Payment. Owner shall provide payment to Contractor for the performance of the Work based upon a monthly Application for Payment from Contractor, and approved by Owner, in an amount equal to ninety-five percent (95.00%) of the requested payment amount and shall retain the balance for payment in accordance with Section 3.4 of this Agreement (the "Retention Amount"), all subject to the requirements set forth in Section 27 of the General Conditions. In the event Owner disapproves a monthly Application for Payment, then Owner shall deliver a written notice of disapproval within seven (7) calendar days after the receipt by Owner of the Application for Payment.

(b) Form of Application for Payment. In addition to the requirements set forth in Section 27 of the General Conditions (including Contractors certification requirement), each of the application for payment of Contractor (an "Application for Payment") shall: (i) set

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forth the proposed use of funds consistent with the Contractor Schedule of Values, including the Cost of the Work to be funded; (ii) contain sufficient detail and with sufficient supporting documentation to permit Owner to confirm that the work to be funded by the draw request has been performed, and that Owner may accept such work in accordance with the guidelines established by HUD to the extent applicable; and (iii) be set forth on the AIA form for application of payment, or such other form mutually acceptable to the Parties.

(c) Payment by Owner. Owner shall pay each approved Application for Payment within thirty (30) calendar days after receipt. Notwithstanding any provision of this Agreement to the contrary, including but not limited to Section 27 of the General Conditions, if Owner fails to pay an approved Application for Payment within thirty (30) calendar days after receipt of an undisputed and properly submitted Application for Payment from Contractor, then Owner shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. Contractor and Owner agree and acknowledge that this provision constitutes a summary of Section 20104.50 of the California Public Contract Code.

### Section 3.4 Conditions Precedent to Release of Retention Amount.

(a) Conditions Precedent. Owner shall not be obligated to make the disbursements of the Retention Amount or take any other action under this Agreement unless the following conditions are satisfied prior to such disbursement:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(ii) All labor has been performed in a good work person-like manner consistent with this Agreement.

(iii) To the maximum extent permitted by law, all persons, firms and corporations, including all laborers, material persons, suppliers and Subcontractors who have furnished equipment, supplied materials or performed work for or in connection with the Work, (the "Potential Claimants"), have been paid or will be paid in full out of the remaining retained percentage; and those persons, firms and corporations have submitted their final statements with an unconditional waiver and release upon final payment. Contractor shall make these waivers available for inspection by Owner. In the event a dispute has arisen between Contractor and one of the parties listed above which prevents Contractor from obtaining the waiver of rights from that party, Contractor may satisfy the requirements of this Section 3.4(a)(iii) by supplying a payment bond issued by a surety licensed to do business in the State of California and acceptable to Owner to remove the effect of any claim against the Property and agree to defend and indemnify Owner against all actions filed by persons who have supplied materials to or performed work for or in connection with this Agreement.

(iv) All portions of the Work (that are the responsibility of Contractor) requiring inspection by any governmental authority have been inspected and approved by such

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authority and all requisite certificates of occupancy, approvals, licenses and permits (if applicable) that are the responsibility of Contractor, have been issued.

(v) To the extent applicable, Owner has received operating manuals and assignments of warranties of Contractor, all Subcontractors and material persons.

(vi) Thirty (30) calendar days have elapsed from recordation by Owner of the Acceptance Certificate.

(vii) If requested by Owner, Contractor has delivered to Owner a final accounting of the actual Cost of the Work, and the Savings, if any, and/or the accountant of Owner has completed a cost certification for the Work.

(viii) All items on the punch-list related to the Work have been completed and accepted by Owner, and Owner has issued an Acceptance Certificate pursuant to Section 2.9 of this Agreement and Section 20 of the General Conditions.

(b) Early Release. Notwithstanding the above, a portion of the Retention Amount may be released to certain Potential Claimants performing work early in the Schedule subject to the approval of Owner, in its sole discretion, prior to satisfaction of all conditions set forth in this Section 3.4 of this Agreement if such Potential Claimant has: (i) fully performed all portions of the Work to be performed by such Potential Claimant; (ii) delivered to Contractor, or to Owner, all applicable operating manuals and assignments of warranties, and other documentation reasonably requested by Owner in connection with work of such Potential Claimant; and (iii) provided Owner unconditional releases for all amounts owed to the Potential Claimant.

#### Section 3.5 Assignment of Claims by Contractor.

In accordance with Section 7103.5 of the California Public Contract Code, Contractor and/or Subcontractor(s), if any, hereby assign to Owner all rights, title, and interest in and to all causes of action each may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), as may be amended, or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 Division 7 of the California Business and Professions Code) as may be amended, arising from purchases of goods, services, or materials pursuant to this Agreement or the applicable subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor (or final payment is tendered to the applicable Subcontractor), in accordance with this Agreement, without further acknowledgement, or action, by the Parties. Such assignment shall survive the expiration or termination of this Agreement.

#### Section 3.6 Information.

Contractor shall provide any information reasonably requested by Owner in connection with the performance of the Work, including (but not limited to) any information required by HUD.

**ARTICLE 4**  
**TERM: DEFAULT: REMEDIES**

Section 4.1 Term.

The term of this Agreement shall extend from the Effective Date until the earlier of:  
(a) termination following an uncured default under this Agreement; or (b) written acceptance of the Work by Owner as completed through the issuance of an Acceptance Certificate; provided, however the indemnification and warranty provisions set forth in this Agreement and/or the General Conditions shall survive the expiration of the term.

Section 4.2 Events of Default by Contractor.

(a) Events of Default. Contractor shall be in default under this Agreement, if Contractor, after five (5) calendar days' notice and opportunity to cure:

- (i) subject to Section 32(b) of the General Conditions, refuses or fails to prosecute the Work, or any separable part of it, with the diligence that will insure its Substantial Completion within the Contract Time, or fails to complete the Work within this time;
- (ii) is adjudged bankrupt or there is a general assignment for the benefit of creditors or the appointment of a receiver due to insolvency;
- (iii) refuses or fails to supply sufficient skilled workers or materials;
- (iv) repeatedly fails to make prompt payment to Subcontractors for materials or labor;
- (v) repeatedly or materially disregards the applicable laws, local ordinances, or instructions of Owner; or
- (vi) is in substantial breach of any provision of this Agreement.

(b) Remedies. Following such default by Contractor, Owner shall have the right to pursue all of the remedies set forth in Section 4.3 of this Agreement; provided, however, in the event of default under Section 4.2(a)(i) of this Agreement, Owner shall enforce the remedy set forth in Section 4.3(d) of this Agreement, solely in connection with the failure of Contractor to timely complete the Work.

Section 4.3 Remedies.

(a) Rights of Owner. The occurrence of any default by Contractor set forth in Section 4.2 of this Agreement, shall give Owner the right to take whatever action at law or in equity as may appear reasonably necessary to enforce performance or observance of any obligations, agreements, or covenants under this Agreement, including without limitation:  
(i) termination of this Agreement, (ii) without liability, taking possession of the Property and of all materials, equipment, tools, construction equipment and machinery thereon owned by

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Contractor; (iii) acceptance of assignment of subcontracts; and, (iv) completion of the Work by whatever reasonable method Owner may deem expedient.

(b) Surety. In the event of termination by Owner, Owner shall immediately serve written notice on the surety and Contractor. The surety shall have the right to take over and perform the Work if, within ten (10) calendar days after receiving the notice, it so notifies Owner, in writing, and promptly commences work (and thereafter, the surety shall be bound by all the terms and conditions of this Agreement).

(c) Payment. In the event of termination, Contractor shall not be entitled to receive any further payment until the Work is completed, and applicable lien periods have expired. If the unpaid balance of the Contract Sum exceeds the expense of completing the Work, plus compensation for additional managerial and administrative services and all other reasonable costs and expenses incurred by, or on behalf of Owner, the excess shall be paid to Contractor. If such expenses incurred by Owner exceed the unpaid balance, then, notwithstanding any other remedy invoked by, or otherwise available to, Owner, Contractor and surety (on a joint and several basis) shall be liable for the difference to Owner, and shall promptly pay such amount upon written demand by Owner. Such obligation shall survive the expiration or termination of this Agreement. In the event of any conflict between the terms of this Section 4.3(c) and any other provision of this Agreement, the terms of this Section 4.3(c) shall control.

(d) Liquidated Damages for Delay. By executing this Agreement, Contractor represents that it can, and will, complete the Work within the Contract Time. If Contractor fails to reach Substantial Completion by the date required by this Agreement, the Parties agree that Owner would suffer damages related to the delay, but that such damages would be extremely difficult and impracticable to ascertain. The Parties therefore agree that a reasonable estimate of the damages to be suffered by Owner in the event of such a delay is [\_\_\_\_\_] and No/100ths Dollars [(\$\_)] per calendar day. Contractor shall therefore pay to Owner that amount for each calendar day during which Substantial Completion is delayed beyond the date for Substantial Completion required by, and as set forth in, the Schedule. At the discretion of Owner, Owner shall be entitled to deduct such amount from any payment otherwise due Contractor, and in no event shall such deduction constitute a breach of this Agreement by Owner. Any such amount not deducted shall be immediately payable by Contractor to Owner on written demand of Owner. Such payments are: (i) liquidated damages to Owner solely for the failure of Contractor to timely complete the Work in accordance with this Agreement; (ii) in addition to any other remedy available to Owner for other breach or default(s) of Contractor under this Agreement; and (iii) not a penalty. Such liquidated damages are not in lieu of the indemnity obligations of Contractor set forth separately in this Agreement. This Section 4.3(d) replaces Section 33(a) of the General Conditions, in its entirety. For the avoidance of doubt, the Parties agree and acknowledge that Section 33(b) and Section 33(c) of the General Conditions remain in full force and effect, and are to be read in conjunction with this Section 4.3(d).

#### Section 4.4 Remedies Cumulative.

No right, power, or remedy given to Owner by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or

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remedy shall be cumulative and in addition to every other right, power, or remedy given to Owner by the terms of any such instrument, or by any statute or otherwise against Contractor and any other person. Neither the failure nor any delay on the part of Owner to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by Owner of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 4.5 Termination for Convenience.

Owner shall have the right to terminate this Agreement for convenience pursuant to Section 34 of the General Conditions.

**ARTICLE 5**  
**PARTIES' DISPUTES**

Section 5.1 Definition of Claim Governed by Dispute Clause.

"Claim," as used in this clause, means a written demand or written assertion by one of the Parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of terms of this Agreement, or other relief arising under or relating to this Agreement. A claim arising under this Agreement, unlike a claim relating to this Agreement, is a claim that can be resolved under this Agreement that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this Article 5, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

Section 5.2 Applicability of Dispute Clause.

Except for disputes arising under applicable labor standards (i.e., Davis-Bacon and related acts), all disputes arising under or relating to this Agreement, including any claims for damages for the alleged breach thereof which are not disposed of by this Agreement, shall be resolved under this Article 5. This Article 5 supplements Section 31 of the General Conditions.

Section 5.3 Written Claims to be Submitted to Contracting Officer.

All claims by Contractor shall be made in writing and submitted to the Contracting Officer for a written decision.

Section 5.4 Notice of Decision or Decision Date.

The Contracting Officer shall, within fifteen (15) calendar days after receipt of the request, decide the claim or notify Contractor of the date by which the decision will be made. In no event shall the Contracting Officer render a decision later than sixty (60) calendar days from the receipt of the request.

Section 5.5 Effect of a Decision by Contracting Officer.

A decision of the Contracting Officer shall be final unless Contractor submits a demand for arbitration within the applicable statute of limitations, in accordance with Section 5.8 of this Agreement.

Section 5.6 Duty of Contractor to Perform Pending Claim Resolution.

Contractor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to this Agreement, and comply with any decision of the Contracting Officer.

Section 5.7 Identification of the Contracting Officer.

For purposes of this Agreement, the contracting officer shall be the Executive Director of Owner, or his or her designee (the "Contracting Officer").

Section 5.8 Arbitration of Disputes.

In the event Contractor disputes the determination of the Contracting Officer, then the Parties shall submit the dispute to binding arbitration which, unless the Parties mutually agree otherwise, shall be in accordance with the Arbitration Rules and Procedures of JAMS (the "JAMS Rules") currently in effect, unless arbitration is not required pursuant to Section 5.9 of this Agreement, in which event Contractor shall proceed in accordance with Section 31 of the General Conditions. The demand for arbitration shall be filed in writing with Owner and with JAMS. The arbitration panel shall consist of a single arbitrator and the process for the arbitration shall proceed in accordance with the then current JAMS Rules. A demand for arbitration shall be made within thirty (30) calendar days following the determination of the Contracting Officer, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

Section 5.9 Situations when Arbitration Not Applicable.

The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by Parties shall be specifically enforceable under applicable law in any court having jurisdiction thereof. This Agreement to arbitrate shall not apply if: (a) any person or entity whom either Party believes is necessary or beneficial to the full resolution of the claim cannot be joined in or bound by the arbitration proceeding; or (b) any person or entity whom either Party believes is necessary as a witness for such a proceeding is not available for such a proceeding; or (c) the amount in controversy exceeds Fifty Thousand and No/100ths Dollars (\$50,000.00); or (d) if any change in the Contract Time or change in the date set forth for Substantial Completion could result from the arbitration.

Section 5.10 Judgment on Final Award.

The arbitrator shall make an award in writing that is consistent with the terms of this Agreement (including but not limited to the terms governing payment of attorneys' fees) and the

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laws of the state of California, and that includes findings of fact and a reasoned decision. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Section 5.11 Notice of Third-Party Claims.

In accordance with Section 9201(b) of the California Public Contract Code, Owner shall provide Contractor timely notification of any third-party claim related to this Agreement (if any).

**ARTICLE 6**  
**FEDERAL REQUIREMENTS**

Section 6.1 Certain Requirements.

(a) Compliance with Laws. Contractor shall comply with all applicable state and federal laws, rules and regulations, including but not limited to the requirements of the following, as the same may be amended from time to time:

(i) The requirements of Executive Order 11246, as more particularly set forth in Exhibit J;

(ii) The Fair Housing Act, 42 U.S.C. 3601 et seq., and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; the fair housing poster regulations, 24 CFR Part 110, and the HUD Fair Housing Act Advertising Guidelines;

(iii) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and regulations issued thereunder relating to nondiscrimination in housing, 24 CFR Part 1;

(iv) Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 CFR Part 146;

(v) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 CFR Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-12189, and regulations issued thereunder, 28 CFR Part 36; and

(vi) The Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4801-4846.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

(b) No Limitation. Contractor is required to comply with all applicable laws regarding the Work, and the failure to include, or otherwise specify, any applicable law in this Section 6.1, or elsewhere in this Agreement, shall not be construed to waive, limit, or otherwise impair the obligation of Contractor to comply with such laws.



## Section 6.2 Recordkeeping, Audit & Reporting Requirements

(a) Recordkeeping; Access. The books and records of Contractor pertaining to its performance under this Agreement shall be kept in accordance with generally accepted accounting principles, and shall be retained for at least three (3) years after Owner makes final payment to Contractor under this Agreement and all other pending matters are closed.

Contractor agrees to grant a right of access to Owner, Authority, HUD, any agency providing funds to Owner or Authority, the Comptroller General of the United States, and any of their authorized representatives, with respect to any books, documents, papers, or other records pertinent to this Agreement in order to make audits, examinations, excerpts, and transcripts. Owner shall notify Contractor of any records it deems insufficient. Contractor shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by Owner in such notice, or if a period longer than fifteen (15) calendar days is reasonably necessary to correct the deficiency, then Contractor shall begin to correct the deficiency within fifteen (15) calendar days and correct the deficiency as soon as reasonably possible.

(b) Contractors. Contractor agrees to include in first-tier subcontracts under this Agreement a clause substantially the same as Section 6.2(a) of this Agreement. The term "subcontract" as used in this clause excludes contracts and purchase orders not exceeding Ten Thousand and No/100ths Dollars (\$10,000.00).

(c) Access for Disputed Matters. The period of access and examination under Section 6(a) and Section 6(b) of this Agreement for records relating to: (i) appeals under the Dispute Section of this Agreement; (ii) litigation or settlements of disputes arising from the performance of this Agreement; or (iii) costs and expenses of this Agreement to which Owner, Authority, HUD or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

(d) Audit. Owner, Authority, HUD, any agency providing funds to Owner or Authority, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right to perform any audit of the finances and records of Contractor related to its performance under this Agreement, including without limitation, the financial arrangement with anyone Contractor may delegate to discharge any part of its obligations under this Agreement.

## Section 6.3 Interest of Members of Congress.

No Member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

## Section 6.4 Interest of Member, Officer, or Employee and Former Member, Officer, or Employee of Owner.

No member, officer, or employee of Owner or Authority, no member of the governing body of the locality in which the project is situated, no member of the governing body by which

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Authority was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one (1) year thereafter or such longer time as the Code of Ethics of Authority may require, have any interest, direct or indirect, in this Agreement or the proceeds thereof, unless the conflict of interest is waived by Authority and by HUD.

#### Section 6.5 Lobbying Activities.

Contractor shall comply with 31 USC 1352 which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, loan, or cooperative agreement. Contractor further agrees to comply with the requirement of such legislation to furnish a disclosure (OMB Standard Form LLL) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with a Federal contract, grant, loan, or cooperative agreement, which payment would be prohibited if made from Federal appropriated funds.

### **ARTICLE 7** **GENERAL PROVISIONS**

#### Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Owner and Contractor or its agents, employees or subcontractors, and Contractor shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Contractor has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under this Agreement. In regards to the performance of the Work, Contractor shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that subcontractors shall be solely responsible for similar matters relating to their employees. Contractor shall be solely responsible for its own acts and those of its agents and employees. Contractor is not authorized to act on behalf of Owner with respect to any matters except those specifically set forth in this Agreement. Owner shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of Contractor, whether arising from actions under this Agreement or otherwise.

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Owner agrees to exercise all reasonable efforts to enable Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving, in a timely manner, information required by Contractor and making payments to Contractor in accordance with the requirements of the Contract Documents.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against Owner or Authority by any person that Contractor may have employed or with whom Contractor may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the performance of the Work, and Contractor shall include similar requirements in any contracts entered into for the performance of the Work.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

Section 7.4 Indemnification.

(a) Obligation of Contractor. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, Authority and its commissioners, and each of their consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a Party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a Party or person described in this Section 7.4.

(b) No Limitation. In claims against any person or entity indemnified under this Section 7.4 by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 7.4 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

(c) Survival. The provisions of this Section 7.4 shall survive the termination or expiration of this Agreement.

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Section 7.5 Non-Liability of Owner and Authority Officials, Employees and Agents.

No member, official, employee or agent of Owner or Authority shall be personally liable to Contractor in the event of any default or breach by Owner or Authority or for any amount which may become due to Contractor or its successor or on any obligation under the terms of this Agreement.

Section 7.6 Authority as Third Party Beneficiary.

Authority shall be a third party beneficiary of this Agreement. There shall be no other third party beneficiaries to this Agreement.

Section 7.7 Conflict of Interest.

Contractor covenants that neither it nor any of its directors, officers, partners or employees has any interest, nor shall acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed by it.

Section 7.8 Representatives; Authorization.

(a) Representation. To facilitate communication, the Parties to this Agreement shall designate a representative with responsibility for the routine administration of the obligations of each Party under this Agreement. The Parties initially appoint the following as representatives:

Owner:	Joseph Nagel Island City Development 701 Atlantic Avenue Alameda, California 94501 Tele: (510) 747-4300 Email: jnagel@alamedahsg.org
--------	---

Contractor:	[_____]
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(b) Authorization. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, or other action by Owner or Authority is required or permitted under this Agreement, such action may be given, made, or taken by the Executive Director of Owner, and/or his or her designee, without further action or approval by the Board of Directors of Owner or the Board of Commissioners of Authority, and any such action shall be in writing. The Executive Director of Owner, and/or his or her designee, may, in his or her discretion, agree in writing to modification of the dates by which action are to be complete or to waive any terms and conditions of this Agreement. The Executive Director of Owner, and/or his or her designee, is authorized to execute all ancillary documents necessary to

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effectuate the intent of this Agreement, and to negotiate and execute amendments to this Agreement substantially in conformance with the intent of this Agreement.

Section 7.9 Notices, Demands and Communications.

Formal notices, demands, approvals, claims, and communications between the Parties shall be in writing and shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

Authority: Island City Development  
701 Atlantic Avenue  
Alameda, California 94501  
Attention: Joseph Nagel, Construction Project Manager

With a copy to: Goldfarb & Lipman LLP  
550 South Hope Street, Suite 2685  
Los Angeles, California 90071  
Attention: Jhaila Brown

Contractor: [\_\_\_\_\_]

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 7.9. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.10 Applicable Law.

This Agreement shall be governed by California law.

Section 7.11 Parties Bound.

Other than in connection with the portions of the Work to be performed by Subcontractors, Contractor shall not assign or otherwise transfer this Agreement, as a whole, or in any part, without the prior written consent of Owner. Any such attempted assignment or transfer shall be null and void, and shall constitute a default under this Agreement. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

Section 7.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.13 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 have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Waivers.

Any waiver by Owner of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by Owner to take action on any breach or default of Contractor or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Contractor to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by Owner to any act or omission by Contractor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the written consent of Owner to future waivers.

Section 7.15 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the provisions of this Agreement.

Section 7.16 Entire Understanding of the Parties.

This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Section 1654 of the California Civil Code as may be amended from time to time, or any other state law, or common law principle) shall not apply to the interpretation of this Agreement.

Section 7.17 Builder's Risk Insurance.

Owner shall purchase and maintain a Builder's Risk Insurance policy, and shall include the interests of Owner, Authority, Contractor, and Subcontractors. All deductible amounts will be the responsibility of Owner. Notwithstanding any provision of this Agreement to the contrary, including but not limited to Section 33 of the General Conditions, pursuant to

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Section 7105 of the California Public Contract Code, Contractor shall not assume responsibility for repairing or restoring damages caused by an "act of God" in excess of five percent (5.00%) of the Contract Sum; provided, that the Work damaged was performed by Contractor, or its Subcontractors (as applicable) in accordance with accepted and applicable building standards and this Agreement.

Section 7.18 Contractor Notifications.

(a) Notifications. Contractor shall notify Owner promptly, in writing, of any and all of the following:

(i) Any litigation or claim of any kind affecting or relating to Contractor or its subsidiaries or any Material Subcontractor where the amount claimed is or maybe One Hundred Thousand and No/100ths Dollars (\$100,000.00) or more whether covered by insurance or not;

(ii) Any termination of a construction contract to which Contractor is a party;

(iii) Any default or potential default of a Material Subcontractor or material supplier (including without limitation, its inability to maintain its schedule);

(iv) Any material adverse change in the financial condition of Contractor or any Material Subcontractors, any material adverse change in the operations of Contractor or any Material Subcontractors, or any change in the management of Contractor or any Material Subcontractors;

(v) Any other circumstance, event, or occurrence that results in a material adverse change in the ability of Contractor or any Material Subcontractor to timely perform any of its obligations under any of the Contract Documents.

(b) Material Subcontractor. For the purposes of this Section 7.18(b), "Material Subcontractor" means a Subcontractor performing more than Twenty-Five Thousand and No/100ths Dollars (\$25,000.00) of the Work.

Section 7.19 Time.

Time is of the essence in the performance of the Work.

Section 7.20 Conflict Among Contract Documents.

In the event of any conflict between the terms of this Agreement and the other Contract Documents, the terms of this Agreement shall control. In the event of any conflict between the terms of this Agreement and the Exhibits, unless otherwise noted, the terms of this Agreement shall control.

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Section 7.21 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

**[SIGNATURE PAGE FOLLOWS]**



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IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their duly authorized officers and shall become effective as of the Effective Date, it being the intent of the Parties that Owner be the last of the Parties to sign this Agreement.

**OWNER:**

ISLAND CITY DEVELOPMENT  
a California nonprofit public benefit corporation

By: 

DocuSigned by:

*Sylvia Martinez*

88FEDACB7D8D461...

Vanessa Cooper

President

**CONTRACTOR:**

[\_\_\_\_\_]

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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## **EXHIBIT A**

### **SCOPE OF WORK**

[See Attached]

#### **Scope I: Roofing**

#### **Poppy Place Roof Scope**

##### **Overlay Option MA-CBMA-EX-W**

- 1 Properly prepare existing roof for new roofing system. Confirm existing components of the existing roof assembly. Conduct moisture survey of entire roof area. Remove and replace any wet, damaged, or deteriorated materials. Submit results of the survey to IB Roof Systems, prior to installation, for analysis.
- 2 Install one (1) layer of ¼" Securock Glass Mat Roof Board mechanically fastened to the steel deck using Deckfast or IB #14 HD Fastener and IB 3" Insulation Plates
- 3 Install any required sloping to achieve 3/8" per foot slope to existing drain locations as shown on drawings.
- 4 Install new IB PVC Single-Ply 80 roof system per manufacturers specifications.
- 5 New roof must have a minimum 3 year contractor warranty and a minimum 20-year manufacturer warranty.
- 6 Install all new stack/vent flashings, curb flashings, roof drains and guards, corners, and parapet wall caps.
- 7 Coordinate the roof work with the owners rep and for other contractors to remove and reinstall any existing equipment or mechanical devices.
- 8 Install all new caps at mechanical curbs (heat pumps).
- 9 Please see IB Assembly Letter for additional details

##### **Tear Off Option MA-CBMAIN LL-W**

- 1 Remove and dispose of existing flat roof material.
- 2 Inspect for any water damage to the existing structure (any required repairs will be additional cost).
- 3 Install any required sloping to achieve 3/8" per foot slope to existing drain locations as shown on drawings.
- 4 Install new IB PVC Single-Ply 80 roof system per manufacturers specifications.
- 5 New roof must have a minimum 3 year contractor warranty and a minimum 20-year manufacturer warranty.
- 6 Install all new stack/vent flashings, curb flashings, roof drains and guards, corners, and parapet wall

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caps.

- 7 Coordinate the roof work with the owners rep and for other contractors to remove and reinstall any existing equipment or mechanical devices.
- 8 Install all new caps at mechanical curbs (heat pumps).
- 9 Please see IB Assembly Letter for additional details

## **Scope 2: PV Solar**

### **POPPY PLACE PV SOLAR**

- 1 Contractor to design, supply and install new Photovoltaic system at the Poppy Place Apartments, 50 Residential units and ground floor offices located at 1628 Webster St. Alameda Ca. 95401
- 2 This property is being converted from use as a tourist hotel to full occupancy apartments 50 residential units plus business offices.
- 3 The existing electrical usage is expected to increase due to the additional full residential occupancy demand.
- 4 The new system shall include battery backup storage.
- 5 General The scope of work for the new systems include engineering, permitting, procurement, construction, and commissioning, supervision, materials and supplies, labor, tools, construction equipment and machinery, utilities and transportation for the proper execution and completion of a fully integrated and operational System. Contractor shall perform, supervise and direct the Work in accordance with Industry Standards, Applicable Law and Project Milestone dates.
- 6 Contractor and Manufacturer shall provide a 25-year performance warranty or performance output warranty to include 100% of repair or replacement costs of defective equipment or component(s), including labor and shipping.

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**EXHIBIT B**

**LIST OF SUBCONTRACTORS**

[See Attached]

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**EXHIBIT C**

**CONTRACTOR SCHEDULE OF VALUES, QUALIFICATIONS AND EXCLUSIONS**

[See Attached]

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**EXHIBIT D**

**LIST OF PLANS**

[See Attached]

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**EXHIBIT E**

**GENERAL CONDITIONS FOR CONSTRUCTION CONTRACT (FORM HUD-5370)**

[See Attached]

## **EXHIBIT F**

### **INSURANCE REQUIREMENTS**

#### **General Requirements**

(i) During the performance of the work and until its acceptance by Owner, Contractor and each Subcontractor shall maintain in full force public liability and property damage insurance in accordance with this Exhibit F.

(ii) Before commencing work, Contractor and each of its Subcontractors shall furnish Owner with a Certificate of Insurance, in triplicate (naming Owner as the Certificate Holder) indicating insurance coverage with respect to the liability assumed under the provisions of this Exhibit F, and shall further indicate the insurance coverage is in force and will cover all operations under the contract with minimum limits as shown below:

#### **Contractor**

(1) Workers' Compensation Insurance that meets statutory limits and Employer's Liability limit at not less than One Million and No/100ths Dollars (\$1,000,000.00) per occurrence.

(2) Commercial General Liability including Blanket Contractual Liability, Employees as Additional Insured, Completed Operations-Products Liability, and deletion of any exclusion pertaining to explosion, collapse, and underground property damage hazards, Personal Injury Liability endorsement, Property Damage Liability including Broad Form Property Damage endorsement.

The minimum limits of liability shall be:

Contractor:

\$5,000,000 Combined Single Limit per Occurrence Bodily Injury and Property Damage

\$5,000,000 General Aggregate Limit

\$5,000,000 Products and Completed Operations Aggregate

Products and Completed Operations Insurance shall be maintained for a minimum period of two (2) years after final payment, and contractor shall continue to furnish evidence of such coverage to Owner on an annual basis during the aforementioned period.

Liability Insurance shall be written to cover all claims incurred during the term of this Agreement or out of any work performed pursuant to this Agreement, regardless of when such claim shall be first made against Owner and/or Contractor. Should any required liability



insurance be written on a claims-made basis, Contractor shall continue to provide such evidence of coverage for four (4) years after completion and acceptance of the Project.

(3) Comprehensive Automobile Liability Insurance applicable to any owned, non-owned or hired vehicles in limits not less than the following:

Five Million and No/100ths Dollars (\$5,000,000.00) per occurrence Combined Single Limit of Bodily Injury and Property Damage Liability.

The limits required in numbers 2 and 3 above may be satisfied through any combination of limits under primary liability and automobile liability policies and excess/umbrella liability policies.

Subcontractors

Contractor shall require that all Subcontractors maintain and provide evidence of insurance as follows:

Commercial General Liability:

Bodily Injury & Property Damage:	\$1,000,000 per occurrence;
Personal Injury:	\$1,000,000;
General Aggregate:	\$1,000,000;
Products/Completed Operations Aggregate:	\$1,000,000;
Automobile Bodily Injury and Property Damage Liability:	\$1,000,000 per occurrence; and
Workers' Compensation Statutory Employers' Liability	\$1,000,000.

With the exception of Workers' Compensation insurance, each policy shall be endorsed to include Owner, Authority and Contractor as additional insureds, and shall also provide the following:

All liability policies shall be endorsed to state that the coverage of Subcontractors shall be considered primary and non-contributory, and that any liability insurance carried by Owner or Contractor shall be considered excess.

All policies of insurance required of the Subcontractor shall be endorsed to state that the insurer will provide Owner, Authority and Contractor with a thirty (30)-calendar day notice of cancellation or non-renewal. Prior to the time of commencement of the subcontract, Subcontractors shall be required to deliver to Contractor certificates providing evidence of the insurance required under this provision, along with copies of the endorsements required above.

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Hazardous Materials: Contractor shall require the hazardous materials removal subcontractor(s) to provide insurance for liability arising out of removal and disposal of all hazardous materials from the Property. Such insurance shall be for the minimum limits of Five Million and No/100ths Dollars (\$5,000,000.00) per occurrence and Five Million and No/100ths Dollars (\$5,000,000.00) in the aggregate, and shall name Owner, Authority and Contractor as additional insureds. The limits required in this Paragraph B may be satisfied by any combination of primary and excess/umbrella policies.

Contractor shall take responsible steps to insure that each of the Subcontracts and subordinate subcontractors assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of operations within the scope of work provided for under the Contract, and shall cooperate with the insurer in all litigated claims and demands or defense which the insurer is called upon to adjust or resist which arise out of said work.

Proof of the above insurance policies furnished at the expense of Contractor, and applicable to all operations under the Contract, must be provided to Owner prior to commencement of work under a Contract. Coverage shall be placed with insurance companies with A.M. Best Co.'s rating of no less than A-VII. The policy must name Owner and Authority as an additional insured and the consultant must provide Owner and Authority with Certificates of Insurance for the preceding coverages. The insurance policies must provide a thirty (30)-calendar day notice of cancellation and be primary to any other insurance carried by Owner and Authority.

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**EXHIBIT G**

**DAVIS BACON WAGE RATES**

[See Attached]

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**EXHIBIT H**

**SECTION 3 POLICY**

[See Attached]

**EXHIBIT I**

**SECTION 3 CERTIFICATION**

**SECTION 3 AFFIRMATIVE ACTION PLAN**

In accordance with the Housing and Urban Development Act of 1968, as amended, and the regulations pursuant to that Act.

---

(Contractor)

Agrees to comply with Section 3 of that Act by assuring that to the greatest extent feasible

- Training and employment opportunities will be given to lower income residents of the project; and
- Contracts for work in connection with the project will be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of project.

\_\_\_\_\_ will initiate the following actions to insure utilization of lower income project residents as employees or trainees and to incorporate project area small business as subcontractors and supplies:

1. Contractor will establish and maintain a directory of service organizations, job referral agencies and manpower training programs operating within, or serving, project area residents.
2. Contractor will submit prior to the award of a contract, a signed assurance to comply with Section 3 regulations and requirements.
3. Contractor will provide, prior to the signing of a contract, a statement of new work force needs, including trainee positions.
4. Contractor will notify Community based organizations of available employment opportunities, and shall maintain records of response from such organizations.
5. Contractor will undertake personal recruitment efforts directed to such service organizations and to schools with lower income resident training programs.
6. Contractor will maintain a file of the names and addresses of each low income resident worker referred and what action was taken with respect to each referred worker (Attached).

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7. Contractor will include the Section 3 clause in every subcontract for work in connection with HUD projects (Attached).

8. For each subcontract, the Prime Contractor will submit, prior to Contract award, the Section 3 Affirmative Action Plans of its subcontractors.

9. Contractor will not attempt to circumvent Section 3 Provisions.

10. Contractor will make a good faith effort to employ or fill training positions with lower income project area residents, will, as a minimum, provide evidence of the following:

(a) Attempts to recruit from the project area through location advertising media, community organizations, public and private agencies operating within or serving the project area, such as the State Employment Department, and the Private Industry Council.

(b) Maintain a list of all lower income area residents who have applied either on their own or referral from any source, and if such persons, if otherwise qualified, have been employed.

11. Contractor will make a good faith effort to incorporate project area businesses as Subcontractors and Suppliers.

12. Contractor will provide the Section 3 workforce and business utilization reports required under this contract.

\_\_\_\_\_ fully realizes failure or refusal to comply and give satisfactory assurances of future compliance with the requirements of this Affirmative Action Plan shall be proper basis for any or all of the following actions: Cancellation, termination or suspension in whole or in part of the contract; a determination of ineligibility or debarment from any further contracts under any federal program with respect to which the failure or refusal occurred until satisfactory assurances of future compliance have been received.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**EXHIBIT J**

**NOTICE FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT  
OPPORTUNITY UNDER EXECUTIVE ORDER 11246, AND THE STANDARD  
FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT  
SPECIFICATIONS**

[See Attached]

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**EXHIBIT K**

**SCHEDULE**

[See Attached]



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**EXHIBIT L**

**DOCUMENTS INCORPORATED FOR REFERENCE FROM RFP**

[See Attached]

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**CONSTRUCTION SERVICES AGREEMENT**  
**BETWEEN**  
**THE**  
**ISLAND CITY DEVELOPMENT,**  
**A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**  
**AND**

[\_\_\_\_\_]

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## **ATTACHMENT F**

### **“Travel Accommodations Expense Requirements-Consultants”**

Consultants are expected to use prudent planning in arranging business travel to control costs. Consultant is expected to exercise business judgment to align expenses with requirements of the Housing Authority (ICD). Only necessary and reasonable business expenditures will be reimbursed. Costs for transportation, lodging, meals, and incidental expenses deemed reasonable as compared to the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation, prescribed by the U.S. General Services Administration, for travel in the contiguous 48 United States

Any Consultant who incurs business expenses on behalf of ICD must submit an expense report with appropriate documentation explaining the business purpose of travel and itemizing expenses.

#### **Air Transportation**

In general, Consultants should fly at the lowest cost economy fare. As circumstances permit, air transportation should be booked in advance to achieve the lowest available advance-purchase fare.

#### **Ground Transportation**

When using ground transportation, Consultants should select the most economical mode of reliable and safe transportation. Reimbursement will be for the actual and reasonable expense incurred while on ICD business.

Rental cars are to be the lowest cost vehicle at a cost and class no greater than that which is necessary to conduct business.

#### **Corporate Automobile Liability**

Coverage shall meet or exceed the minimums required in the RFP.

In lieu of Corporate Automobile Liability Coverage, Consultant shall purchase rental car insurance for limits of not less than \$1,000,000 at no additional cost to the ICD. This rental car insurance provision shall apply when the Consultant's firm's auto liability policy does not include the above referenced insurance provisions (i.e. any auto Code 1).

#### **Accommodations**

Expenses for lodging are to be for a standard single room rate at the most reasonable priced mid-tier hotel available. Exceptions may be made for Consultants attending conventions and meetings with hotels; other exceptions require business rationale, which must be documented and approved by the ICD. Where extended travel is involved, reduced rates and/or extended-stay hotel options must be considered.

#### **Out-Of-Pocket Expenses**

Incidental expenses will be reimbursed for the actual and reasonable cost incurred unless otherwise stated by local county laws and regulations, (e.g. daily

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allowance instead of actual cost.) Receipts are required at an expenditure level to satisfy local tax requirements.

**Non-reimbursable Expenses**

Consultants may not be reimbursed for out-of-pocket expenses of a personal nature. (e.g., recreational expenses, gifts, etc.).

Any and all costs incurred by Consultant shall not exceed the Contracted Amount set forth in the Consultant Services Contract.



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**ATTACHMENT G**  
**“Additional Federal Requirements”**

The work in this RFP is subject to the Davis-Bacon Labor Standards and Form HUD-1040. The work is also subject to State of California Prevailing Wage

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**ATTACHMENT H – HUD FORMS**  
HUD-5369A

**ATTACHMENT I**

**Conflict of Interest Form available at:** <https://form.alamedahsg.org/Forms/A4Gpo>

**HOUSING AUTHORITY OF THE CITY OF ALAMEDA/ISLAND CITY  
DEVELOPMENT**

**CONFLICT OF INTEREST CERTIFICATION**

**PART A: REGULATIONS, REQUIREMENTS AND PROHIBITIONS**

As a public housing authority (PHA), the Housing Authority of the City of Alameda, including its affiliates Island City Development, the Alameda Affordable Housing Corporation, and any other affiliates (collectively, ICD) are obligated to ensure fairness in the procurement process under state and local laws and regulations and regulations of the United States Department of Housing and Urban Development (HUD) and to further ensure a standard of ethics amongst its contractors and consultants in carrying out all contractual obligations. The purposes of the Conflict-of-Interest Certification are to ensure: 1) fairness in the procurement process so that the ICD, the public, and other governmental entities have confidence in the integrity, independence, and impartiality in the selection of its consultants and contractors of the ICD; and 2) that its consultants and contractors have the best interests of the ICD while doing work on its behalf.

**PART I. CONFLICT OF INTEREST**

1. In accordance with HUD regulations (24 CFR §§ 570.611, 982.161), neither the ICD nor any of its contractors or subcontractors or their employees, agents, consultants, officers, or elected or appointed officials ("Bidder's/Proposer/Vendor") may enter into any contract or arrangement in connection with the Section 8/Housing Choice Voucher program or Community Development Block Grants (CDBG) in which any of the following classes of persons has any financial interest or benefit, direct or indirect, actual or apparent, during tenure or for one year thereafter:
  - (1) Any present or former member or officer of the ICD (except a participant commissioner) or their immediate family member or business associate;
  - (2) Any employee of the ICD, or their immediate family member or business associate, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs;
  - (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or

- (4) Any member of the Congress of the United States.
2. No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
3. "Immediate family member" includes spouses, parents, siblings, and children.
4. "Financial interest or benefit" includes, but is not limited to, salaries, consultant fees, commissions, gifts, sales income, rental payments, investment income, other business income, program services that may have a monetary value, impacts to property owned by one of the parties listed above that is within 500 feet of a project funded by ICD.
5. Any member of these classes of persons must disclose the member's interest or prospective interest to ICD and HUD.

## **PART II. ORGANIZATIONAL CONFLICTS OF INTEREST**

1. In order to ensure the best interests of the ICD in its contractual relationships and comply with state and federal conflict of interest laws, the ICD desires to avoid an organizational conflict of interest, which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
  - a. Award of the contract may result in an unfair competitive advantage;
  - b. The Bidder's/Proposer/Vendor's objectivity in performing the contract work may be impaired;
  - c. ICD official, officer, employee or their immediate family member or business associate may have a financial gain or benefit.
2. Where a Bidder/Proposer/Vendor is aware of, or has reason to be aware of, an organizational conflict of interest, whether actual or apparent at the time of this submittal, the Bidder/Proposer/Vendor shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest, financial, contractual, organizational, or otherwise, relating to the work to be performed hereunder and bearing on whether the Bidder/Proposer/Vendor has possible organizational conflict of interests with respect to:
  - a. being given an unfair competitive advantage;

- b. being able to render impartial, technical sound, and objective assistance or advice; and/or
  - c. any ICD official, officer, employee or their immediate family member or business associate may have a financial gain or benefit.
- 3. The Bidder/Proposer/Vendor must disclose all relevant information and request the ICD to make a determination as to whether there is a conflict, either actual or apparent, with respect to the contract that may be awarded.
- 4. The Bidder/Proposer/Vendor shall be required to agree that if, after award, the Bidder/Proposer/Vendor discovers an organizational conflict of interest with respect to this contract, the Bidder/Proposer/Vendor shall make an immediate and full disclosure in writing to the ICD which shall include a description of the action which the Bidder/Proposer/Vendor has taken or intends to take to eliminate or neutralize the conflict. The ICD may, however, terminate the contract for the convenience of ICD if it would be in the best interest of ICD, or if required to comply with local, state and federal laws and regulations.
- 5. In the event the Bidder/Proposer/Vendor was aware of an organizational conflict of interest before the award of this contract, or develops an organizational conflict of interest during the performance of the contract, and fails to disclose the conflict to the ICD, the ICD may terminate the contract for default.
- 6. The Bidder/Proposer/Vendor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the ICD and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this contract.
- 7. As part of its bid/proposal, the Bidder/Proposer/Vendor may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions of the organization and how that structure or system would avoid or mitigate such organizational conflict.
- 8. No award shall be made until the disclosure or certification has been evaluated by the ICD.
- 9. Refusal to provide the disclosure or certification and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the Bidder/Proposer/Vendor.

10. If the ICD determines that a potential conflict exists, the selected Bidder/Proposer/Vendor shall not receive an award unless the conflict can be eliminated or otherwise resolved to the satisfaction of the ICD in its sole and absolute discretion.

### **PART III. WARRANTY & REPRESENTATION OF NON-COLLUSION**

1. Bidder/Proposer/Vendor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any ICD official, officer, employee, or immediate family member or business associate of any ICD official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any contract.
2. Bidder/Proposer/Vendor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any ICD official, officer, employee, or immediate family member or business associate of any ICD official, officer, or employee as a result of consequence of obtaining or being awarded any contract.
3. Bidder/Proposer/Vendor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render the resulting contract void and of no force or effect.

**HOUSING AUTHORITY OF THE CITY OF ALAMEDA/ISLAND CITY  
DEVELOPMENT**

**CONFLICT OF INTEREST CERTIFICATION**

**PART B: CERTIFICATION OF BIDDER/PROPOSER/VENDOR**

- The Bidder/Proposer/Vendor certifies that to the best of its knowledge and belief and except as otherwise disclosed, no member of the classes of persons listed in Part I of Part A above has an interest or prospective interest, direct or indirect, financial, contractual, organizational or otherwise, in the Bidder/Proposer/Vendor.
- The Bidder/Proposer/Vendor certifies that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any actual or apparent organizational conflict of interest as set forth in Part II of Part A above.
- The Bidder/Proposer/Vendor acknowledges and agrees to the obligations of Bidder/Proposer/Vendor as set forth in Part II above and to the rights and remedies of the ICD as set forth in Part II of Part A above as they relate to organizational conflicts of interest.
- The Bidder/Proposer/Vendor certifies that to the best of its knowledge and belief and except as otherwise disclosed, it has not paid or given, and will not pay or give, to any third party including, but not limited to, any ICD official, officer, employee, or immediate family member or business associate of any ICD official, officer, or employee any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any contract; and further has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any ICD official, officer, or employee, as a result of consequence of obtaining or being awarded any contract as set forth in Part III of Part A above.
- The Bidder/Proposer/Vendor has disclosed the following (by submitting an online form at:

<https://form.alamedahsg.org/Forms/A4Gpo>

- (a) Any current or prior personal relationships with ICD current or former official, officer or employee or their immediate family member or business associate
- (b) Any current or prior business or financial relationships with ICD current or former official, officer or employee or their immediate family member or business associate
- (c) Any current or prior relationship with ICD current or former official, officer or employee or their immediate family member or business associate

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- (d) If aware of, or there is reason to be aware of, an organizational conflict of interest, whether actual or apparent at the time of this submittal, describe all relevant facts concerning any past, present, or currently planned interest, financial, contractual, organizational, or otherwise, relating to the work to be performed hereunder.