



Housing Authority  
of the  
City of Alameda

**PHONE:** (510) 747-4300  
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**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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**AGENDA**

**REGULAR MEETING OF THE BOARD OF COMMISSIONERS**

**DATE & TIME**

**Wednesday, June 15, 2022 - 7:00 PM**

**Closed Session - 6:00 PM**

**LOCATION**

Pursuant to Assembly Bill No.361 (Chapter 165, Statutes of 2021) approved by the Governor on September 16, 2021) codified at Government Code Section 54953 a local legislative body is authorized to hold public meetings remotely via teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when, among other requirements, a legislative body of a local agency holds a meeting during a proclaimed state emergency, and makes the public meeting accessible “via a call-in option or an internet-based service option” to all members of the public seeking to access and attend the meeting, offer public comment, and address the legislative body.

**PUBLIC PARTICIPATION**

Public access to this meeting is available as follows:

Join Zoom Meeting:

<https://us06web.zoom.us/j/89822835206?pwd=K1d1Qng1TIBsY01uWIRHaEx2U3JSdz09>

Meeting ID: 898 2283 5206

Passcode: 023235

Persons wishing to address the Board of Commissioners are asked to submit comments for the public speaking portion of the Agenda as follows:

- Send an email with your comment(s) to [jpolar@alamedahsg.org](mailto:jpolar@alamedahsg.org) and [vcooper@alamedahsg.org](mailto:vcooper@alamedahsg.org) prior to or during the Board of Commissioners meeting
- Call and leave a message at (510) 871-7435.

When addressing the Board, on agenda items or business introduced by Commissioners, members of the public may speak for a maximum of three minutes per agenda item when the subject is before the Board.

Persons in need of special assistance to participate in the meetings of the Housing Authority of the City of Alameda Board of Commissioners, please contact (510) 747-4325 (voice), TTY/TRS: 711, or [jpolar@alamedahsg.org](mailto:jpolar@alamedahsg.org). Notification 48 hours prior to the meeting will enable the Housing Authority of the City of Alameda Board of Commissioners to make reasonable arrangements to ensure accessibility.



## PLEDGE OF ALLEGIANCE

1. ROLL CALL
2. BOARD COMMISSIONER RECUSALS
3. Public Comment (Non-Agenda)
4. Closed Session - 6:00 p.m. - Adjournment to Closed Session to Consider:
  - 4.A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.  
 Property Location: 1845 Bay Street, Alameda, CA 94501, 1825 Paru Street, Alameda, CA 94501, 1416 Sherman Street, Alameda, CA 94501, 745 Lincoln Avenue, Alameda, CA 94501, 2102 Clement Avenue, Alameda, CA 94501, 2116 Clement Avenue, Alameda, CA 94501, 1911 Mulberry Street, Alameda, CA 94501, 2101 Eagle Avenue, Alameda, CA 94501, 2137 Otis Drive , Alameda, CA 94501, 2209 Otis Drive, Alameda, CA 94501, 1825 Shoreline Drive, Alameda, CA 94501, 955 Shorepoint Court , Alameda, CA 94501, 955 Shorepoint Court, Alameda, CA 94501, 965 Shorepoint Court , Alameda, CA 94501  
 Assessor's Parcel Numbers: 73-425-1, 72-384-68, 72-345-25-1, 73-414-14, 71-228-3, 71-228-10, 71228-24, 71-228-46, 71-228-46, 74-1230-104, 74-1230-129, 74-1250-17, 74-1285-300, 74-1285-275, 74-1285-272, 74-1285-220  
 Agency Negotiation: Vanessa Cooper, Executive Director, Stephanie Shipe, Director of Portfolio Management, Sylvia Martinez, Director of Housing Development and Cheley Quiambo, Asset Manager  
 Negotiating Parties: Housing Authority of the City of Alameda and Alameda Affordable Housing Corporation  
 Property Owner: Housing Authority of the City of Alameda  
 Under Negotiation: Investment in Real Property, Price and Terms of Payment
  - 4.B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.  
 Property Location: 1825 Poggi Street Alameda, CA 94501  
 Assessor's Parcel Numbers: 74-451-1-8  
 Agency Negotiation: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development  
 Negotiating Parties: Housing Authority of the City of Alameda and Vue Alameda Owner L.P.  
 Property Owner: Vue Alameda Owner L.P.  
 Under Negotiation: Investment in Real Property, Price and Terms of Payment
  - 4.C. CONFERENCE WITH REAL PROPERTY NEGOTIATOR Pursuant to Government Code Section 54956.8.  
 Property Location: 1628 Webster Street, Alameda CA 94501  
 Assessor's Parcel Number 73-418-4-1  
 Agency Negotiators: Vanessa Cooper, Executive Director, and Sylvia Martinez, Director of Housing Development, Negotiating Parties: Alameda Hospitality,



LLC; Under Negotiation: Price and Terms of Payment.

- 4.D. Pursuant to Government Code Section 54956.9(a)  
Conference with Legal counsel re existing litigation: Housing Authority of the City of Alameda v. Johnson, Alameda County Superior Court No. RG18-933615
- 4.E. Pursuant to Government Code Section 54956.9(a)  
Conference with Legal counsel re existing litigation: Housing Authority of the City of Alameda v. Camanag, Alameda County Superior Court No. RG21109420
5. Adjournment of Closed Session
6. RECONVENE REGULAR MEETING - 7:00 p.m.
7. Announcement of Action Taken in Closed Session, if any.
8. Public Comment (Non-Agenda)
9. CONSENT CALENDER  
Consent Calendar items are considered routine and will be approved or accepted by one motion unless a request for removal for discussion or explanation is received from the Board of Commissioners or a member of the public.
- 9.A. Approve Minutes of the Board of Commissioners Meeting held May 18, 2022. **Page 5**
- 9.B. Accept the Communications and Outreach Plan Update. **Page 14**
- 9.C. Accept the Monthly Overview Report for Housing Development. **Page 23**
- 9.D. Accept the Monthly Development Report for Rosefield Village. **Page 26**
- 9.E. Accept Revised Procurement Policy. **Page 40**
- 9.F. Accept the Monthly Overview Report for the Alameda Rent Program and Authorize the Executive Director or Designee to take all actions necessary to transfer the Program to the City, by the target date of October 1, 2022, including, if necessary, issuing a 180-day notice to the City. **Page 69**
10. AGENDA
- 10.A. Moving To Work Presentation. **Page 81**
- 10.B. Establish a Nominating Ad Hoc Committee for the Appointment of the Chair and Vice Chair of the Board of Commissioners for the Period of July 1, 2022 - June 30, 2023. **Page 101**
- 10.C. Approve Amended and Restated Island City Development (ICD) Bylaws and Accept Names for Appointee to the ICD Board. **Page 103**
- 10.D. Authorize the Executive Director to Negotiate and Execute a Purchase and Sale Agreement for 1628 Webster Street. **Page 117**
- 10.E. Authorize the Executive Director, or her designee, to Execute an Option for Island City Development, or its affiliate, to purchase the Improvements at 1628 Webster Street. **Page 167**
- 10.F. Adopt Resolution of the Board of Commissioners of the Housing Authority of the



City of Alameda Ratifying the Proclamation of a State of Emergency by the Governor of the State of California on March 4, 2021, and Making Findings Authorizing Continued Remote Teleconference Meetings of the Board of Commissioners Pursuant to Brown Act Provisions, as amended by Assembly Bill No. 361. **Page 174**

11. ORAL COMMUNICATIONS, Non-Agenda (Public Comment)
12. EXECUTIVE DIRECTOR'S COMMUNICATIONS
13. COMMISSIONER COMMUNICATIONS, (Communications from the Commissioners)
14. CONTINUATION OF CLOSED SESSION OF HOUSING AUTHORITY BOARD OF COMMISSIONERS – IF NEEDED
15. Announcement of Action Taken in Closed Session, if any.
16. ADJOURNMENT

\* \* \* Note \* \* \*

- Documents related to this agenda are available on-line at:  
<http://www.alamedahsg.org/cms/One.aspx?portalId=3723405&pageId=5912638>
- Know Your RIGHTS Under The Ralph M. Brown Act: Government's duty is to serve the public, reaching its decisions in full view of the public. The Board of Commissioners exists to conduct the business of its constituents. Deliberations are conducted before the people and are open for the people's review. In order to assist the Housing Authority's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the Housing Authority accommodate these individuals.



**DRAFT MINUTES  
REGULAR MEETING OF THE BOARD OF COMMISSIONERS  
WEDNESDAY, MAY 18, 2022**

PLEDGE OF ALLEGIANCE

1. ROLL CALL

Present: Chair Tamaoki, Commissioner Hadid  
Commissioner Rickard, and Commissioner Sidelnikov

Absent: Chair Grob, Commissioner Mun

2. BOARD COMMISSIONER RECUSALS

None.

3. Public Comment (Non-Agenda)

None.

4. Closed Session - 5:31 p.m. - Adjournment to Closed Session to Consider:

Chair Tamaoki called the meeting to order at 5:30 p.m. and announced that the Board would adjourn to Closed Session.

- 4.A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8.  
Property Location: 401 Willie Stargell Avenue, Alameda, CA 94501  
Assessor's Parcel Numbers: 074-0905-042-03  
Agency Negotiators: Vanessa Cooper, Executive Director, Stephanie Shipe, Director of Portfolio Management, and Cheley Quiambao, Asset Manager  
Negotiating Parties: Housing Authority of the City of Alameda and Shinsei Gardens Apartments, L.P.  
Property Owner: Shinsei Gardens Apartments, L.P.  
Under Negotiation: Exercise of purchase option and right of first refusal.



- 4.B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.  
Property Location: 1825 Poggi Street Alameda, CA 94501  
Assessor's Parcel Numbers: 74-451-1-8  
Agency Negotiation: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development  
Negotiating Parties: Housing Authority of the City of Alameda and Vue Alameda Owner L.P.  
Property Owner: Vue Alameda Owner L.P.  
Under Negotiation: Investment in Real Property, Price and Terms of Payment
- 4.C. CONFERENCE WITH REAL PROPERTY NEGOTIATOR Pursuant to Government Code Section 54956.8.  
Property Location: 1628 Webster Street, Alameda CA 94501  
Assessor's Parcel Number 73-418-4-1  
Agency Negotiators: Vanessa Cooper, Executive Director, and Sylvia Martinez, Director of Housing Development, Negotiating Parties: Alameda Hospitality, LLC; Under Negotiation: Price and Terms of Payment.
- 4.D. Pursuant to Government Code Section 54956.9(a)  
Conference with Legal counsel re existing litigation: Housing Authority of the City of Alameda v. Johnson, Alameda County Superior Court No. RG18-933615
- 4.E. Pursuant to Government Code Section 54956.9(a)  
Conference with Legal counsel re existing litigation: Housing Authority of the City of Alameda v. Camanag, Alameda County Superior Court No. RG21109420
- 5. Adjournment of Closed Session

Chair Tamaoki adjourned Closed Session at approximately 7:26 p.m.

- 6. RECONVENE REGULAR MEETING - 7:00 p.m.

Chair Tamaoki reconvened the Regular Meeting at approximately 7:27 p.m.

- 7. Announcement of Action Taken in Closed Session, if any.

Chair Tamaoki announced that the Board discussed and provided direction to staff on items 4.A through 4.E.

- 8. Public Comment (Non-Agenda)

Ann and Dominic Henri were present to provided comment on the AUSD site (2615 Eagle Ave.). Mr. & Ms. Henri introduced themselves and provided a brief statement of their backgrounds. Mr. & Ms. Henri own the home located directly across the street from the AUSD site. They stated that they wanted to introduce



themselves and offer to partner as community members in making the project successful and also voice their concerns regarding this project. They asked the project to consider the current limited access to enter 2600 block of Eagle from either side (Broadway or Pearl St.) and traffic increases in the neighborhood and Edison School Zone. As done with the Everett Commons and newer projects, one solution, they suggested, to this issue may be to include parking for this project.

Considering the number of infants and young children living close to this project site, Mr. Henri indicated that another of their concerns surrounds the proper remediation of asbestos, lead based paints, and underground fuel tanks that may be currently stored on this project site.

Chair Tamaoki expressed appreciation for the feedback provided by Mr. & Ms. Henri.

## 9. CONSENT CALENDER

Consent Calendar items are considered routine and will be approved or accepted by one motion unless a request for removal for discussion or explanation is received from the Board of Commissioners or a member of the public.

- \*9.A. Approve Minutes of the Board of Commissioners Meetings held March 16, 2022, March 30, 2022, and April 27, 2022.
- \*9.B. Accept the Quarterly Overview Report for Executive Department.
- \*9.C. Accept the Quarterly Overview Report for the Housing Programs Department.
- \*9.D. Accept the Monthly Overview Report for Emergency Housing Voucher (EHV).
- \*9.E. Accept the Quarterly Overview Report for Property Operations.
- \*9.F. Accept the Quarterly Overview Report for Housing Development.
- \*9.G. Accept the Quarterly Development Report for North Housing.
- \*9.H. Accept the Monthly Development Report for Rosefield Village.
- \*9.I. Accept the Quarterly Overview Report on Procurement.
- \*9.J. Accept the Fiscal Year to Date Financial Report through the Month of March 2022.
- \*9.K. Accept the Quarterly Investment Report for Period Ending March 30, 2022.
- \*9.L. Approve an increase in the financial consulting contract with Nan McKay and Associates of \$50,000 for a total not-to-exceed of \$300,000.
- \*9.M. Approve the Executive Director or designee to make certain limited changes to the recurring and hiring process and to return to the Board of Commissioners at the next routine Board meeting for ratification. Authorize the ED or designee to:
  - A) advertise and/or make a hire at a pay range or title level lower than is





income and expenses; B) Housing Assistance Payment (HAP) Budget and related expenditure of HUD-held HAP reserves; C) Capital Improvement Project (CIP) Budget and related use of property and agency reserves and any surplus operating cash from Fiscal Year 2022-23 to cover these expenses; D) Transfer by the Executive Director of up to \$1,325,697 in this budget year, as needed, from AHA property reserves to cover losses in the Housing Programs Department administrative operating budget and E) Revised Schedule of Authorized Positions effective July 1, 2022, and Commissioner Hadid seconded the motion. This meeting took place via Zoom, so a roll call vote was taken, and the motion passed unanimously.

Yes 4 Chair Tamaoki, Commissioner Hadid, Commissioner Rickard, and Commissioner Sidelnikov

10.B. Approve the Update to the 2022-23 Reserve Policy.

Sylvia Martinez, Director of Housing Development stated that the presentation to be provided summarizes both of these agenda items: item 10.B (Update to the 2022-23 Reserve Policy), and item 10.C (Resolution to Loan Funds and Option to Ground Lease to Island City Development (ICD)), as they are related recommendations and actions. This presentation included an overview comparing the October 2021 Reserve Policy with the proposed funding request for 2022. This comparison reflects that there has been an increase of approximately \$4M in the overall budget that could potentially be allocated.

In response to Chair Tamaoki, Ms. Martinez stated that the additional \$4M in the budget is a result of having received \$1.4M in redevelopment funds and the remaining approximately \$2.6M is a result of various loan repayments and other funds identified once the audit was completed.

Chair Tamaoki expressed appreciation for the thorough analysis.

Commissioner Rickard moved to accept approve the Update to the 2022-23 Reserve Policy, and Commissioner Hadid seconded the motion. This meeting took place via Zoom, so a roll call vote was taken, and the motion passed unanimously.

Yes 4 Chair Tamaoki, Commissioner Hadid, Commissioner Rickard, and Commissioner Sidelnikov

10.C. Adopt Resolution to Loan Island City Development Up To a) Up to \$8 million for an adaptive reuse acquisition and an Option to Ground Lease to Island City Development, b) Up to \$4.4 million for 2615 Eagle Avenue and an Option to Ground Lease to Island City Development, b) Up to \$3 million for North Housing PSH I, c) Up to \$1.5 million for North Housing PSH II, d) Up to \$4.538 million for





motion. This meeting took place via Zoom, so a roll call vote was taken, and the motion passed unanimously.

Yes 4 Chair Tamaoki, Commissioner Hadid,  
Commissioner Rickard, and Commissioner Sidelnikov

- 10.E. Accept the Monthly Overview Report for the Alameda Rent Program and Authorize the Executive Director or Designee to take all actions necessary to transfer the Program to the City and Provide Direction to Staff on whether to issue a 180 day notice to the City.

Ms. Cooper stated that Greg Kats has accepted the position of Administrative Services Director and will be training Bill Chapin to serve as the Acting Director of the Rent Stabilization Programs as Mr. Kats gradually transitions out of his current role. Ms. Cooper stated that it is expected that the Memo regarding the transfer of the Alameda Rent Program will be published on May 26, 2022 and that the item will be on the Consent Agenda for the June 7, 2022 City Council Meeting; with an agreed upon termination date of September 30, 2022. In the event of a delay, AHA may wish to issue a 180 days' notice in order to establish a firm end date for the program.

In response to Chair Tamaoki, Ms. Cooper stated that taking action prior to the item being published on May 26, 2022 could be interpreted by the City Council, as a sign of poor faith. However, if the matter is not heard at the June 7, 2022 City Council Meeting, staff would recommend that the Board approve the Executive Director or designee to issue a 180 days' notice.

Following discussion, Commissioner Rickard moved to accept the Monthly Overview Report for the Alameda Rent Program and Authorize the Executive Director or Designee to take all actions necessary to transfer the Program to the City and return to the Board in June with a proposal to issue a 180 days' notice to the City, if necessary, and Commissioner Sidelnikov seconded the motion. This meeting took place via Zoom, so a roll call vote was taken, and the motion passed.

Yes 3 Commissioner Hadid, Commissioner Rickard,  
and Commissioner Sidelnikov

No 1 Chair Tamaoki

- 10.F. Adopt Resolution of the Board of Commissioners of the Housing Authority of the City of Alameda Ratifying the Proclamation of a State of Emergency by the Governor of the State of California on March 4, 2021, and Making Findings Authorizing Continued Remote Teleconference Meetings of the Board of Commissioners Pursuant to Brown Act Provisions, as amended by Assembly Bill





OF COMMISSIONERS – IF NEEDED

N/A

15. Announcement of Action Taken in Closed Session, if any.

N/A

16. ADJOURNMENT

Chair Tamaoki adjourned the meeting at approximately 8:28 p.m.

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Vanessa M. Cooper  
Secretary and Executive Director

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Kenji Tamaoki, Acting Chair  
Board of Commissioners





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To: Honorable Chair and Members of the Board of Commissioners

From: Joshua Altieri, Community Relations Manager

Date: June 15, 2022

Re: Accept the Communications and Outreach Plan Update.

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### **BACKGROUND**

AHA hired a Community Relations Manager to work on a number of communications and outreach activities. The Communications and Outreach Plan was created to identify goals and track progress towards those goals.

### **DISCUSSION**

The attached report provides a progress update on the goals set forth in the Communications and Outreach Plan.

### **FISCAL IMPACT**

Staff has already budgeted for these activities in the current and next fiscal year.

### **CEQA**

N/A

### **RECOMMENDATION**

Review the 2021-202 Communications and Outreach Plan.

### **ATTACHMENTS**

1. AHA Communication Plan Update 4-8-2022

Respectfully submitted,

*Joshua Altieri*

Joshua Altieri, Community Relations Manager

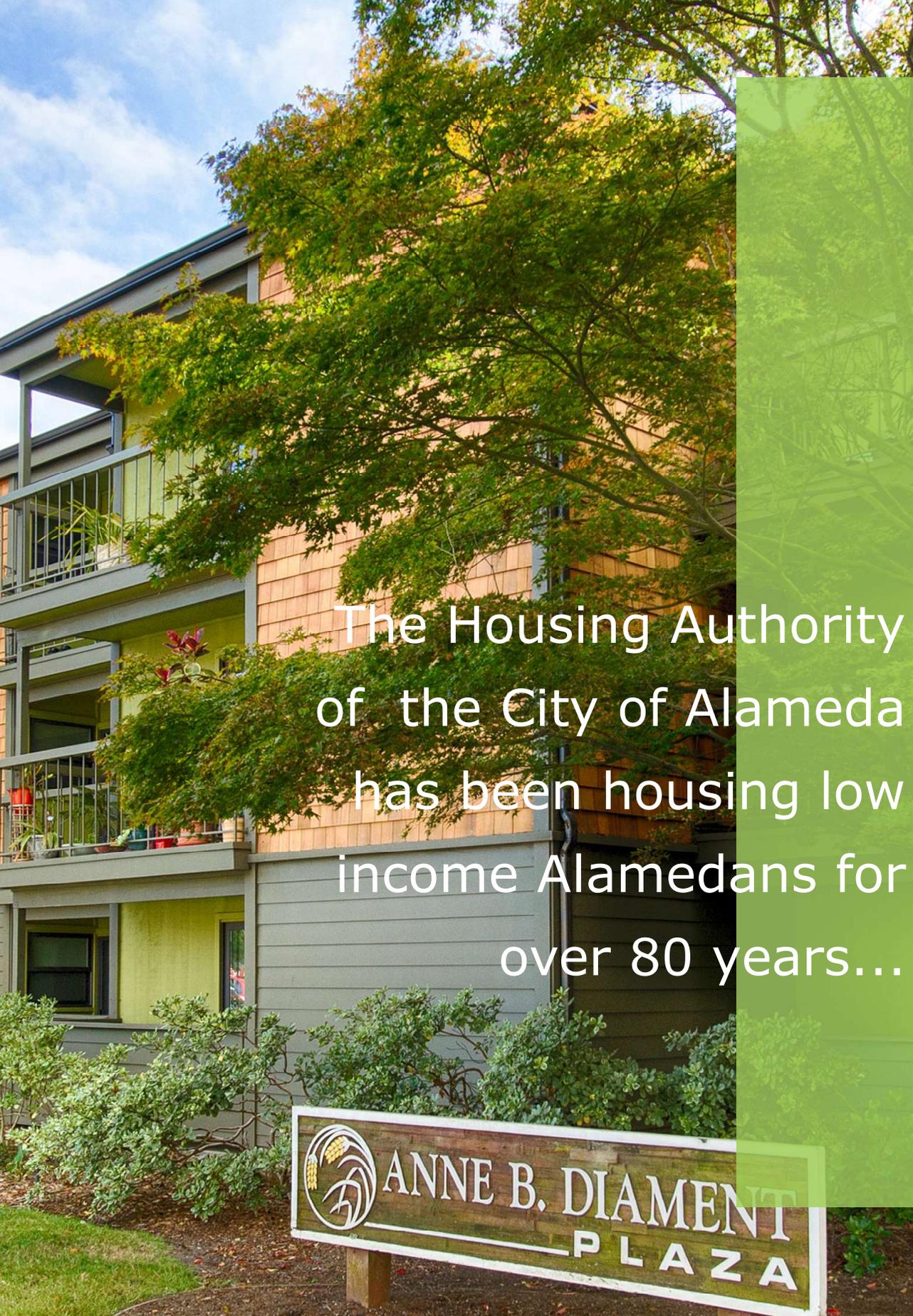


# Communications & Outreach Plan

## 2021-2022



Housing Authority  
— of the —  
City of Alameda



The Housing Authority  
of the City of Alameda  
has been housing low  
income Alamedans for  
over 80 years...

# AHA Overview

**The Housing Authority of the City of Alameda has been housing low income Alamedans for over 80 years and is currently a medium sized Public Housing Authority that consists of four core departments:**

- 1. Housing Programs Department** manages \$30 million in annual housing subsidies and operates several housing programs including the Housing Choice Voucher program which houses 3,255 adults and children.
- 2. Portfolio Management Department** maintains Housing Authority real estate properties and provides highest level of customer service to residents at AHA properties.
- 3. City of Alameda Rental Stabilization Program** is administered by AHA through a services agreement with the City of Alameda and over 11,000 rental homes are actively regulated.
- 4. Housing Development Department** has built 168 new affordable homes since 2010 and has in the pipeline another 700 affordable rental homes to be built by 2030. In total, as of April 2022 AHA currently owns 845 affordable homes in the City of Alameda.

These four business departments perform at the highest level because they are supported by AHA staff in the following areas: Human Resources, Information Technology, Procurement, Risk Management, Finance, Communications, and Maintenance.

In 2016, The Housing Authority of the City of Alameda formed Island City Development (ICD) to partner with AHA on developing new rental homes in the City of Alameda. Then in 2017, AHA created the Alameda Affordable Housing Corporation (AAHC) to operate affordable homes in the City of Alameda.

With this amount of significant involvement with City of Alameda residents and a very wide range of stakeholders, AHA recognized the need to invest resources into the development of a communications program which includes the hiring of a Community Relations Manager (CRM). The CRM performs marketing and public relations duties which build positive brand equity, increase brand awareness, promote overall transparency and use storytelling to document how AHA is driving community impact amongst low-income households in the City of Alameda.

The Community Relations Manager supports and collaborates with all AHA departments and agency leadership on work with community partners. Current partnerships include the City of Alameda, Alameda Food Bank, Girls Inc., Alameda Point Collaborative, Alameda Family Services, LifeSTEPS, and the Alameda Boys and Girls Club. With many more community organizations targeted for partnerships in 2021 and beyond.



# Outreach and Content Strategy

With media consumption trending to online devices (desktop and mobile phones), AHA will increase digital communication efforts to expand reach and increase efficiency to ensure that marketing messages are reaching target audiences. The two pillars of any digital strategy are content creation and the website, so the Community Relations Manager is focused on completing a website re-design and creating the multimedia content that can be pushed through digital marketing channels (social, email, web, text), content that includes:

- AHA Overview Video <https://vimeo.com/641680749>
- FSS Program Recruitment Video <https://vimeo.com/641681076>
- Community Partnership Video <https://vimeo.com/641680888>
- Social Media Videos **Produced.**
- Animated logo **Produced.**
- Website **In development with expected completion by August 29,2022.**
- Social Media Posts **Happening weekly.**





## Outreach and Content Strategy (cont)

**AHA's website is being re-designed with target launch date of August 29, 2022. Key areas of focus for the new website will be ADA compliance, multi-lingual capacity, site navigation, mobile user experience, data collection, and site analytics. Furthermore, the AHA logo has been re-designed and is ready for the launch of the newly designed website. Beyond the community outreach and digital marketing efforts, the Community Relations Manager will update internal and external marketing materials, which include:**

- Newsletters for tenants and landlords: **Tenant Newsletter distributed quarterly. Landlord Newsletter distributed twice per year. Vendor newsletter distributed annually. Government newsletter distributed twice per year.**  
[http://www.alamedahsg.org/about\\_us/news\\_announcements\\_and\\_newsletters](http://www.alamedahsg.org/about_us/news_announcements_and_newsletters)
- Press Releases (with digital distribution strategy): **Published as needed.**  
[http://www.alamedahsg.org/about\\_us/a\\_h\\_a\\_press\\_releases](http://www.alamedahsg.org/about_us/a_h_a_press_releases)
- Strategic Plan updates: **Updated twice a year, next update April 2022.**
- Annual Agency Report: **Annual Agency Report 2022 will be completed by November, 2022.**
- AHA Program Collateral: **Freshly branded and plentiful.**
- Waitlist marketing and informational materials: **Completed all marketing materials for September 2021 wait list opening and Rosefield Village wait list opening in January 2022.**
- Board Packets: **Updated with new branding and reviewed in detail prior to monthly publishing.**
- Multi-Lingual versions of marketing materials: **In process of utilizing both paid translation services and free Google Translate.**

"AHA will increase efficiency to ensure that marketing messages are reaching target audiences."

[www.alamedahsg.org](http://www.alamedahsg.org)

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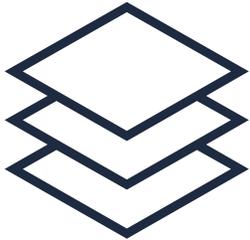
# GOALS

AHA identified seven communication goals that are considered critical elements for AHA to strengthen its profile within the City of Alameda community.



## Integrated Communications Strategy Capability

Continuing to build email lists and social media following.



## Build Reputation for AHA

Build media kit (which includes videos) that highlights AHA's involvement with Alameda Point Collaborative, Bessie Coleman, Operation Dignity. Submitted application for Nan McKay & Associates Service award in summer 2021 and in early 2022 applied for NAHRO award. AHA received the 2021 Golden Nugget award in the "Best Affordable Housing Community" category with under 30 DU/acre.



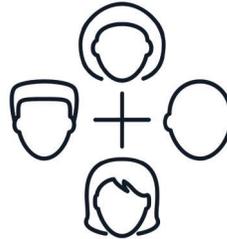
## Expand Community Partnerships

AHA will continue to strive to be a visible and strong community partner woven into the fabric of Alameda's community. AHA's existing partnerships continue to benefit AHA program participants and residents. Partnerships include the Alameda Firefighter holiday toy drive, City of Alameda Recreation and Parks Department, Alameda Food Bank, Alameda Family Services, Boys & Girls Club of Alameda, and Girls Inc. of the Island City. With new partnerships starting in Q1 of 2022 with Leaparts, Drawbridge. Beyond Q1, AHA seeks to deepen its partnership with Alameda College and AUSD to provide further resources to AHA youth as they continue their education.



## Define AHA Brand Standards

New logos have been approved for both AHA and AAHC. New assets (logo, template for general presentation, letterhead) have been provided to all staff. AHA social media profiles feature new AHA branding.



## Diversity, Equity, and Inclusion

Created DEI presentation for public presentations. Also identified over 45 community organizations to conduct outreach about AHA's DEI efforts with first presentations starting in Q1 2022. Completed DEI survey for AHA vendors which can be found at [www.surveymaha.com](http://www.surveymaha.com)



## In Person and Online Events

The Community Relations Manager continues to attend and make presentations at local organizations including Rotary, Kiwanis, Chamber of Commerce, to name a few. One major online AHA event that occurred in October 2021, was the North Housing Investor Briefing in which over fifty interested organizations attended. A high profile in person event was the Rosefield Village Tour that took place on multiple occasions with an attendee roster that included AHA Staff, AHA Commissioners, City of Alameda Staff, Mayor Marilyn Ezzy Ashcraft, among others.



## Manage AHA's Ombudsman Program

The Ombudsman program continues to market itself to AHA residents, program participants, and landlords. In 2021, the Ombudsman program received over 130+ contacts, all of which have been responded to and closed out. Standard Operating Procedures have been developed. While Quality Control is now in place to better track transparency and effectiveness.



# TARGET AUDIENCES

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**AHA seeks to target the specific audiences below. In many cases, it has existing databases or methods of communication, but the CRM will focus on expanding these contacts over the six months.**

- Program participants, tenants, and applicants
- Section 8 Landlords and City of Alameda (Rent Program) Landlords
- Business groups and community-based organizations
- Culturally diverse communities and multicultural groups in and near Alameda
- Current and future employees
- Current and potential AHA residents and program participants.
- Service organizations and service groups such as Rotary and Kiwanis clubs
- City of Alameda Elected Officials
- City of Alameda Staff
- Local, state, and federal elected officials and government agency staff
- Non-profits, religious institutions, and healthcare providers
- Local/Regional print, digital, radio and television outlets
- Neighbors near current and future developments, including Homeowners Associations.
- Alameda Unified School District, Alameda Community College
- Social organizations and advocacy groups
- Industry groups (such as CAHA, NAHRO, CLPHA, NPH, etc.)

# BENCHMARKS AND PATH FORWARD

## Here are benchmarks that have been achieved as of March 2022.

- RFP for new website published to solicit vendors
- RFP for video and graphic design published to solicit vendors
- Ombudsman program setup and actively managing cases
- Communications plan drafted
- Email contact lists have been updated
- Created archives for all photos
- AHA marketing materials developed
- Social media accounts actively posting relevant content
- Delivering quarterly newsletters to tenants and program participants.
- Community Partnerships have been developed with Girls Inc. and Corica Park Golf Course
- Application submitted for Nan McKay & Associates Service Award



## Below are future goals that AHA's Communications Plan needs to meet.

- Develop video library with 4-5 more video assets by December, 2022
- Launch new website by August 29, 2022
- Grow social media following on LinkedIn to over 500 followers by Dec 2022 (357 followers April 6, 2022)
- Grow Facebook to over 1,000 followers by Dec 2022: (643 followers April 6, 2022)
- Submit 3 or more applications for industry and project recognition/awards: Two submitted.
- Secure 3 or more community partnerships to provide services for AHA tenants and voucher program participants (in addition to Drawbridge, LeapArts, City Parks and Recreation)
- Ramp up frequency of AHA presentations to community based organizations to 2-4 meetings per quarter in 2022
- Produce Annual Report by November, 2022

AHA will grow a robust communications platform that features enhanced targeting outreach and uniform brand identity.

To: Honorable Chair and Members of the Board of Commissioners

From: Sylvia Martinez, Director of Housing Development

Date: June 15, 2022

Re: Accept the Monthly Overview Report for Housing Development.

---

## **BACKGROUND**

This memo provides an overview of the Housing Development departmental activities for the prior month.

## **DISCUSSION**

### Island City Development

The Housing Authority previously made two predevelopment loans to Island City Development (ICD) on behalf of two development projects: North Housing and Rosefield Village. In July 2021, the Alameda Affordable Housing Trust Fund awarded \$7,500,000 and a Letter of Intent for \$2,500,000 (contingent on an award from the Local Housing Trust Fund program of the State of California). Additional loan awards were made in the updated Reserve Policy (approved in May 2022 by the Board) and staff is using these awards to submit seven funding applications to the State and other local sources to move four affordable developments forward.

### Affordable Housing Project Pipeline

*Rosefield Village* – An update report on the project is presented as a separate Board item.

*North Housing* – This project will provide a quarterly update in August.

2615 Eagle (Tilden Commons) - This project will provide a quarterly update in August.

Alameda Adaptive Reuse(1628 Webster Street) - This project is discussed in several BOC reports in the current Agenda.

*Acquisitions* –

1. Pulte purchases – Six more purchases will occur before the end of 2022. Previously purchased units have been leased to low income households, including housing choice voucher holders.



2. 1825 Poggi Street – This loan and regulatory agreement is expected to close in June or early July 2022.

Staff continues to evaluate potential real estate development and acquisition opportunities throughout Alameda as they become available.

#### New Funding Opportunities

Staff is applying in both the Housing Authority Project Based Voucher RFP and the State of California Super NOFA (Notice of Funding Availability). Staff contemplates applying for up to four projects by June 28, 2022. In addition, staff is reviewing the RFP released but postponed by the City of Alameda for a partner in a Homekey 3.0 project. Both John Stewart and Company Property Management and Lifesteps are supporting these applications with documents required to show experience and standard management and service plans.

Staff notes that as the State of California becomes a larger and more significant funder of projects, their financial underwriting and competitive application terms are becoming increasingly important. For instance, staff would like to highlight the competitive requirement to include 25% homeless housing in all projects (filled by the Coordinated Entry System run by the County which favors smaller households with greater challenges). In addition, the State funding has a substantial monitoring fee that must be paid, and typically requires 50% residual receipts payments in addition. The State may not allow residual receipts payments under a ground lease to qualify for a share of residual receipts, as has been typically structured in the Housing Authority ground leases. Staff will continue to update the Board on the changing environment around terms and requirements.

On June 7, 2022, the North Housing PSH I development was awarded a total of \$1,265,000 in funding from the City of Alameda, which recently distributed CDBG, HOME, and inclusionary housing funds to various projects in the City. This amount of funding is significant for a small city, and a strong commitment to the North Housing development.

#### Construction in Progress

Staff is prioritizing three items in Construction in Progress (preparation for renovations on portfolio properties):

1. Balcony repair at Independence Plaza - With Board approval in May, this work is being contracted with the plan to start renovation in July and complete in November 2022.
2. PNA's (Physical Needs Assessments) for the property portfolio - PNA inspections began this week.
3. 2615 Eagle Ave.- We have solicited and received bids for the following scope of work and anticipate finalizing contracts and contractors beginning work by June 7, 2022.
4. A. Concrete removal and replacement at the existing driveway due to

neighboring tree roots are lifting the existing concrete, causing a safety/trip hazard.

B. Installation of a security/surveillance system with smoke/fire detection capability.

C. The property has been re-keyed for security purposes.

5. The 701 Atlantic garage/office remodel - The RFQ Draft is being reviewed and is expected to be issued this summer.

**FISCAL IMPACT**

N/A

**CEQA**

N/A

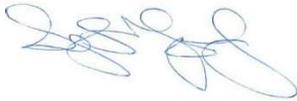
**RECOMMENDATION**

Accept the Monthly Overview Report for Housing Development.

**ATTACHMENTS**

None

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Sylvia Martinez', is written over a light blue circular stamp or seal.

Sylvia Martinez, Director of Housing Development



**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

---

701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Allyson Ujimori, Senior Project Manager

Date: June 15, 2022

Re: Accept the Monthly Development Report for Rosefield Village.

---

### **BACKGROUND**

The Housing and Community Development Department provides monthly reports on projects under construction where either the Housing Authority of the City of Alameda (AHA) or Island City Development (ICD) is acting as developer and provides performance guarantees.

The Rosefield Village project includes new construction of 78 units and renovation of 14 units, totaling 92 units, located on the 700 block of Buena Vista Avenue. ICD is the developer. The overall project scope includes both the rehabilitation of existing structures and the construction of a new building in the middle of the site. In addition to the 78 units, the new central building includes onsite laundry facilities, property management offices, social service coordination offices, a community room, and central courtyard with recreation areas. Twelve existing units, in five buildings, on the east and west sides of the new building will be renovated, and one house will be converted into a duplex. Please see previous monthly Board Reports for project details prior to this month's update.

### **DISCUSSION**

The overall project completion and billing percentage, through May 31, 2022, is approximately 98%. This month's construction activities included the continuation of the interior painting, flooring installation, appliance installation, completion of the elevator, rehab of some of the rehab units, and continuation of site work and landscaping. The new construction building received a Temporary Certificate of Occupancy and Owner approval of units and common areas is underway. There may be delays in leasing up two non-tax credit units due to water connection issues, which are anticipated to resolve in early Fall 2022. These two units are not tax-credit units and thus do not substantially hold up the financing of the property. Staff is tracking the obligations to the investor and is working diligently with the utility company to resolve the issue as soon as possible.

There are no change orders this month. To date, the project has utilized approximately



23% of its hard cost contingency, which is well under the project's percent complete. Owner contingency funds are held separately from the contract and when change orders are approved, the original construction contract value will increase accordingly as shown in the table below.

Given the project cost savings, Staff proposed a few upgrades to the project. These upgrades include installation of solar photovoltaic system to offset common area electricity in the building, roofing upgrades, and landscaping upgrades on the east side of the property to evoke the design of the main courtyard.

**Contingency Utilization**

	<b>Original Budget</b>	<b>Previous Revisions</b>	<b>Current Revisions</b>	<b>Revised Budget</b>
Construction Contract	\$38,218,849	\$970,715	\$0	\$39,269,564
Hard Cost Contingency	\$4,586,262	-\$970,715	\$0	\$3,615,546
Soft Cost Contingency	\$300,000	-\$255,368	-\$13,837	\$30,795

**General Construction Contract Utilization**

<b>Contract Total</b>	<b>Value of Work Completed to Date</b>	<b>Retention Withheld</b>	<b>Amounts Paid to Date</b>	<b>Balance to Finish</b>
\$39,269,564	\$38,297,982	\$3,362,492	\$34,935,490	\$4,334,074

Staff continues to work with AHA Portfolio Management Department and the John Stewart Company (JSCo) on relocation needs. Earlier this month the temporarily relocated household permanently moved to their newly rehabilitated home. The other occupied unit was permanently relocated to another unit at the property due to construction complications discussed above. Staff is working to close out all relocation obligations. Below is an update on the relocation status through May 31, 2022:

<b>Total Units</b>	<b>Vacant Units</b>	<b>Moves Completed</b>	<b>Currently Occupied</b>	<b>Remaining Units to Permanently Relocate</b>	<b>Remaining Units Temporarily Relocated</b>
53	50	31	2*	0	1

\* There was one tenant-occupied unit at 738A Eagle Ave that was permanently relocated to another unit at the property. While 738 is vacated, the general contractor will use it as a temporary office.

*Leasing*

Project staff is working with the Portfolio Management and Housing Programs Departments and the John Stewart Company (JSCo) to lease-up the site. The project received over 8,700 applications. The team has set-up leasing goals and is working diligently to get the project leased up to meet its underwriting targets. In March 2022, the John Stewart Company began interviewing applicants. The tax credit program finalized 2022 rents in April 2022, and JSCo started sending files to compliance for approval. With City approval to occupy the building, staff is working to move residents in as quickly as possible. Staff hopes to occupy all units, except the two discussed above, within the next couple months. Please see below for the lease-up status as of May 31, 2022. There are 68 non-PBV and 23 PBV slots at the property.

<b>Lease-up Status</b>	<b>Non-PBV Applicants</b>	<b>PBV Applicants</b>
Interviews scheduled	2	14
Applications being processed	78	14
Applications with Compliance	21	1
Offers made but not accepted	0	0
Units accepted, but not moved in	2	0
Units moved-in/leased	2	0

**FISCAL IMPACT**

The current construction draw schedule is shown below. The “\$ Disbursed” includes the current draw amount.

	<b>\$ Budget</b>	<b>\$ Disbursed</b>	<b>\$ Disbursed</b>	<b>\$ Balance</b>
<b>Land &amp; Buildings</b>	\$17,435,451	\$17,435,451	100%	\$0
<b>Hard Costs</b>	\$42,963,337	\$35,337,813	82%	\$7,625,524
<b>Soft Costs</b>	\$16,153,390	\$8,730,160	54%	\$7,423,230
<b>Total</b>	\$76,552,178	\$61,503,424	80%	\$15,048,754

**CEQA**

This item is not applicable.

**RECOMMENDATION**

Accept the Monthly Development Report for Rosefield Village.

**ATTACHMENTS**

1. 9.D Attachment 1 - RV BoC Monthly Report

Respectfully submitted,



Allyson Ujimori, Senior Project Manager



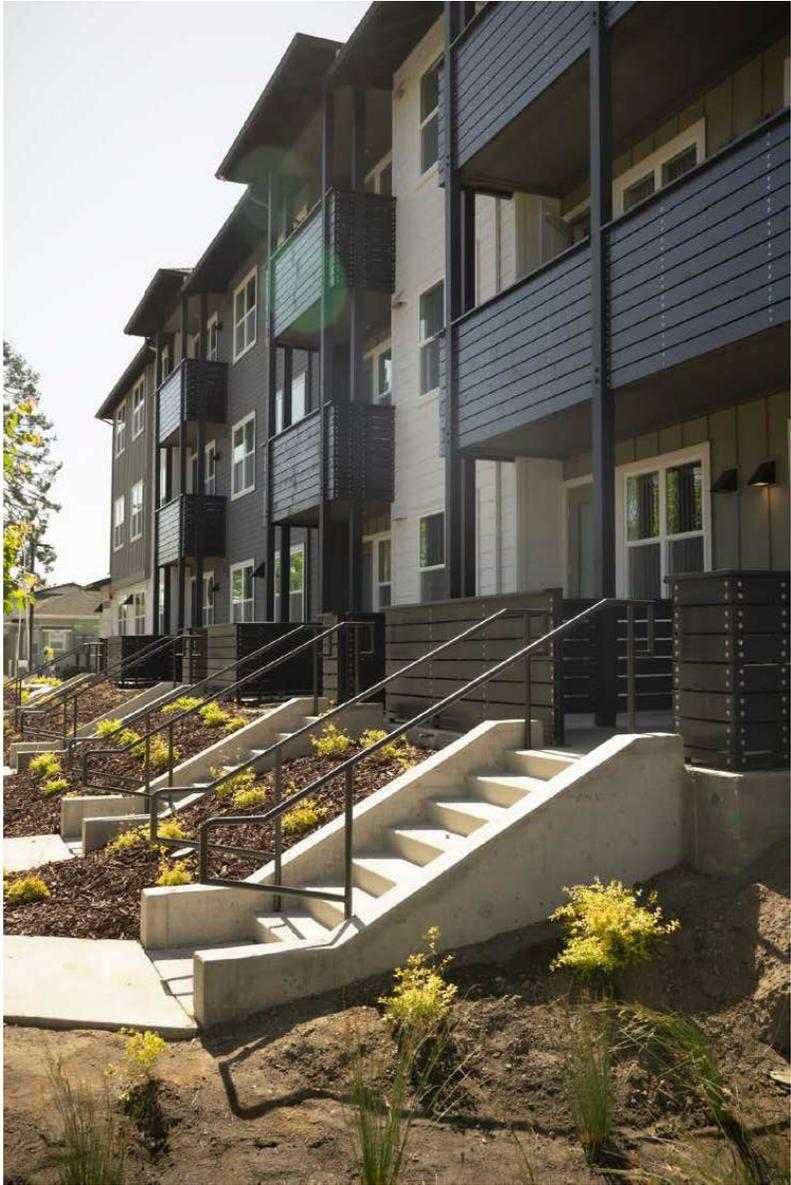
**Rosefield Village**  
Board of Commissioners  
Item 9.D Monthly Report  
June 15, 2022



Frontage off Buena Vista Avenue



Frontage off Buena Vista Avenue



Frontage off Eagle Avenue





**Community  
Room**

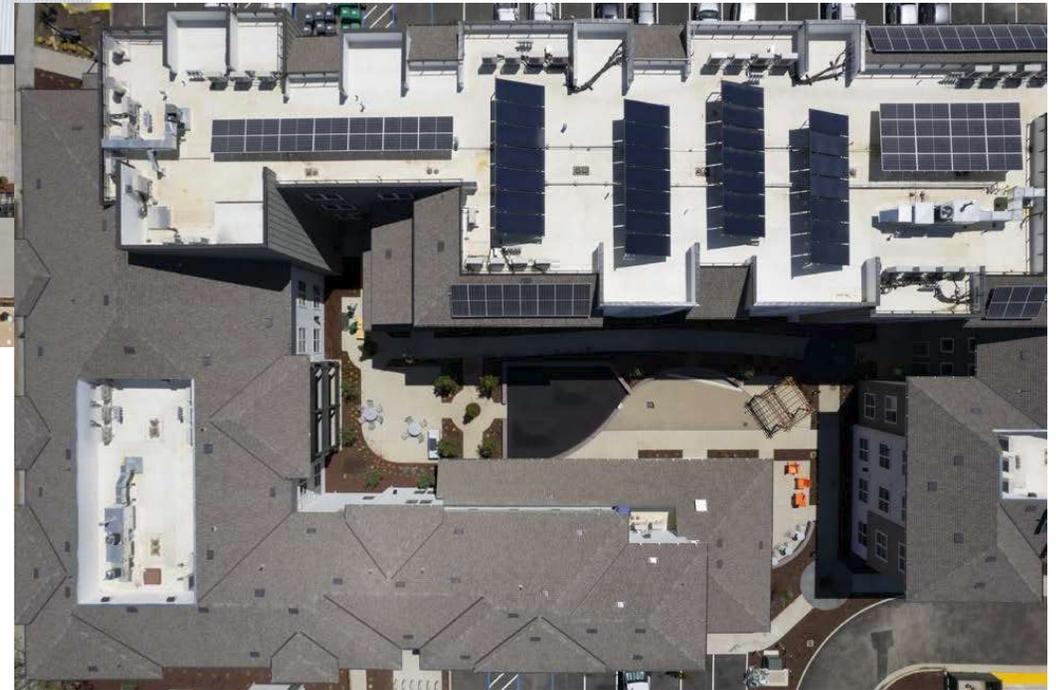
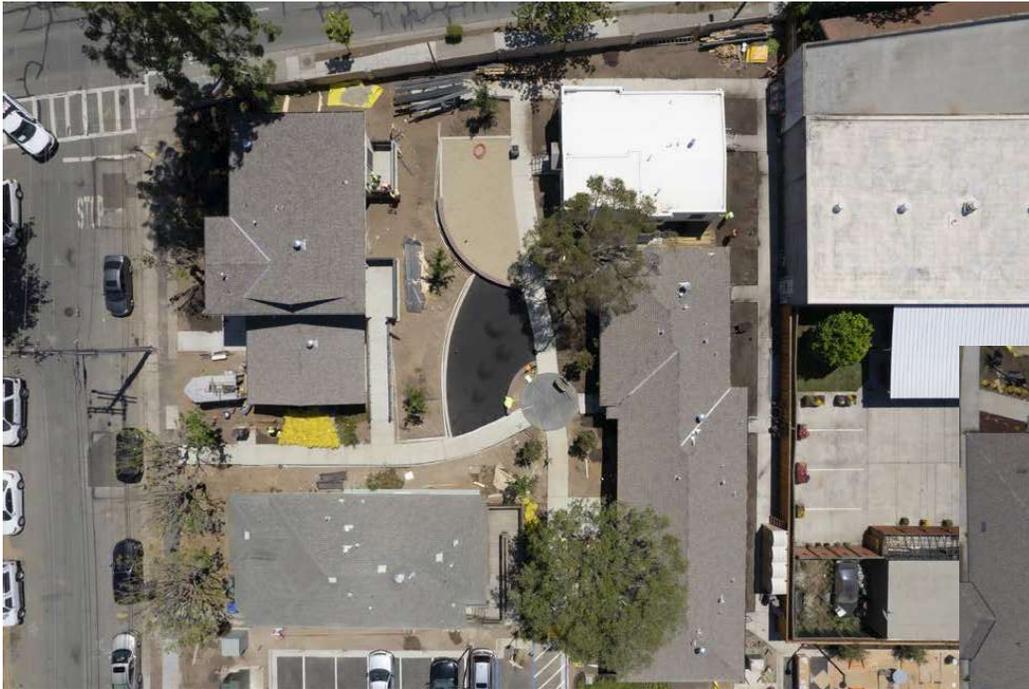


Community Room  
& Kitchen



**Long-term Bike  
Parking**





**Bird's-eye view of new construction & Rehab courtyards**



**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Daniel Mills, Management Analyst

Date: June 15, 2022

Re: Accept Revised Procurement Policy.

---

**BACKGROUND**

The Procurement Policy outlines the methods by which the Agency will obtain goods and services. It was last revised in March 2020. Since that revision, AHA has been optimizing processes that should be reflected in the Procurement Policy.

**DISCUSSION**

This revision to the policy briefly outlines the guidelines on when to utilize internal Purchase Orders and the "Best Practices" to be followed by the procuring individual(s) when a purchase order is employed. This information can be found on pages 19-20 of the attached revised Procurement Policy.

**FISCAL IMPACT**

There is no direct financial impact of these policy revisions, but the policy revisions will change how staff procure services and materials in the future.

**CEQA**

N/A

**RECOMMENDATION**

Accept the revised Housing Authority of the City of Alameda Procurement Policy.

**ATTACHMENTS**

1. AHA Procurement Policy REVISED JUNE 2022\_BOC\_v3

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Mills".

Daniel Mills, Management Analyst





Housing Authority  
of the  
City of Alameda

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**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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## HOUSING AUTHORITY OF THE CITY OF ALAMEDA

### PROCUREMENT POLICY

Effective [June 15, 2022](#)

[Adopted by the Board of Commissioners on April 17, 2013](#)  
[Revised by the Board of Commissioners on August 20, 2014](#)  
[Revised by the Board of Commissioners on January 20, 2016](#)  
[Revised by the Board of Commissioners on April 17, 2019](#)  
[Revised by the Board of Commissioners on May 20, 2020](#)  
[Revised by the Board of Commissioners on June 15, 2022](#)

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## 1. INTRODUCTION

Established for the Housing Authority of the City of Alameda and its other affiliates that do not have separate procurement policies, including, but not limited to the Alameda Affordable Housing Corporation (collectively the "Housing Authority") by action of the Housing Authority Board of Commissioners, this Procurement Policy ("Policy") complies with applicable Federal, State and local laws including 2 Code of Federal Regulations ("CFR") Sections 200.317 through 200.326, and the procurement standards of the U.S. Department of Housing and Urban Development ("HUD"). The Housing Authority has used the HUD Procurement Handbook, HUD Handbook 7460.8, REV 2, as a guide in developing this Policy.

## 2. GENERAL

The Housing Authority will:

- Provide a procurement system of quality and integrity;
- Make all feasible efforts to ensure that small and minority-owned businesses, women's business enterprises, and disabled veteran businesses are used when possible;
- Provide for the fair and equitable treatment of persons or firms involved in Housing Authority procurements;
- Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the Housing Authority;
- Promote competition in contracting; and
- Assure that Housing Authority purchasing actions are in compliance with applicable HUD regulations and all applicable federal, state and local laws.

## 3. DEFINITIONS

**Contracting Officer** – As used in this Policy shall mean the Executive Director or designee, or an employee who has the authority to conduct procurement services for the Housing Authority, regardless of any other job or position title he/she may have. It is the responsibility of the Contracting Officer to: (1) use sound judgment in accomplishing the procurement activities of the Housing Authority, (2) ensure that bidders and contractors receive fair, impartial, and equitable treatment, (3) ensure that contract actions comply with all applicable Federal, state and local laws and rules and with the Housing Authority's approved procurement policy, and (4) seek the best value and greatest overall benefit for the Housing Authority in response to the needs desired.

**Contractor** – Any vendor responding to a procurement solicitation or contracted to do business with the Housing Authority.

**Micro-purchase Threshold** – As used in this Policy, the threshold shall have the same

meaning as that in 2 CFR Section 200.67 and as set by 48 CFR Subpart 2.1 or by Federal enactment. As of June 20, 2018 that amount is \$10,000. The threshold is periodically adjusted and this Policy will automatically incorporate those adjustments.

**Simplified Acquisition Threshold** – As used in this Policy, the threshold shall have the same meaning as that in 2 CFR Section 200.88 and as set by 48 CFR Subpart 2.1 or by Federal enactment. As of June 20, 2018, that amount is \$250,000. The threshold is periodically adjusted and this Policy will automatically incorporate those changes.

**Procurement** – As used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance, (3) professional and consultant services, (4) Architectural and Engineering (A/E) services, (5) social services, and (6) other services.

**Public Project** – As defined by the California Public Contract Code (“PCC”) Section 22002 (c), means any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition and repair work involving any publicly owned, leased or operated facility. (2) Painting or repainting of any publicly owned, leased or operated facility. (3) In the case of a publicly owned utility system, “public project” shall include only the construction, erection, improvement or repair of dams, reservoirs, power plants and electrical transmission lines of 230,000 volts and higher. It does not include “maintenance work” as that term is defined by PCC Section 22002(d)- (e).

**Qualification Based Selection (“QBS”)** – A form of procurement of architect-engineering (A/E) or development services by competitive proposals in which price is not requested in the Request for Qualifications (RFQ) or used as an evaluation factor. Instead, technical qualifications only are reviewed negotiations are conducted with the best-qualified firm. Only A/E services and development partners may be procured by this method.

**Responsible Bidder** – A bidder who is able to comply with the required or proposed delivery or performance schedule; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.

**Responsive Bid** – A bid that conforms exactly to the requirements in the Invitation for Bids (IFB).

#### 4. APPLICATION

This Policy applies to all procurement actions of the Housing Authority, regardless of the

source of funds, except as noted under “exclusions” below. The Housing Authority elects to use the same procurement actions for non-Federal funds as for Federal funds. Nothing in this Policy shall prevent the Housing Authority from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law.

## **5. EXCLUSIONS**

This policy does not govern the following:

- Award of administrative fees earned under the Section 8 voucher program,
- Award of vouchers to tenants under the Section 8 program,
- Execution of landlord Housing Authority Payments contracts under the Section 8 Housing Choice Voucher Program, or
- Execution of Agreements to Enter into Housing Assistance Payment (AHAP) contracts under the Section 8 Project-based Voucher Program.

These excluded areas remain subject to applicable federal laws.

## **6. CHANGES IN LAWS AND REGULATIONS**

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation will, to the extent inconsistent with this Policy, automatically supersede this Policy.

## **7. PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Most procurement information that is not proprietary is a matter of public record and will be available to the public to the extent allowed by applicable law, including, but not limited to the California Public Records Act (California Government Code Section 6250 et seq., including any amendments thereto).

During any procurement process where an award has not yet been made, all information pertaining to the ongoing bid, bid responses, and participating bidders, is not subject to disclosure under the California Public Records Act until such time that a public award is made and a contract is entered into by the applicable parties.

## **8. PRINCIPLES**

Members of the Board of Commissioners, Housing Authority employees, and any others serving in an official position or acting as an agent of the Housing Authority will discharge their duties impartially to ensure fair competitive access to procurement opportunities by responsible contractors, and consistent with the Housing Authority’s Conflict of Interest Policy. In addition, officers, employees and agents will conduct themselves in such a manner as to foster the public’s confidence in the integrity of the Housing Authority’s procurement organization and process. Any attempt to realize personal gain through

Housing Authority employment or to serve as an officer or agent of the Housing Authority through actions inconsistent with the proper discharge of duties is a breach of public trust.

## **9. ETHICS IN PUBLIC CONTRACTING**

The Housing Authority hereby establishes this code of conduct regarding procurement issues and actions and will implement a system of sanctions for violations. This code of conduct is consistent with applicable Federal, State and local laws.

### **A. Conflict of Interest**

No Housing Authority officer, employee, or agent will participate directly or indirectly in the selection, award, or administration of a contract if a conflict of interest, either real or apparent, would be involved. Such a conflict would arise when a one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

(1) A member of the Board of Commissioners, employee, or agent involved in making the award; A member of the Board of Commissioners, employee, or agent involved in making the award;

(2) His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or domestic partner and equivalent relationships);

(3) His/her partner; or

(4) An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

None of the persons mentioned above nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under an ACC with HUD or funded through any other Housing Authority source in which they have an interest, direct or indirect, during his/her tenure and for one year thereafter.

If the conflict is arising from an organizational conflict of interest, such as with an affiliate of the Housing Authority, the award process shall be reviewed by a 3rd party agency, including consultants, other Housing Authority staff, or HUD.

### **B. Gratuities, Kickbacks, and Use of Confidential Information**

To protect the integrity of the procurement system and to ensure that contracts are awarded fairly based on merit, without improper influence, all Housing Authority solicitations and contracts above the small purchase threshold will include clause(s) advising prospective contractors of the prohibitions against gratuities and kickbacks.

No Housing Authority officer or agent will ask for or accept gratuities, favors, or items of any value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

No current employee, or former employee within one year of employment, will ask for or accept gratuities, favors, or items of any value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

### **C. Prohibition Against Contingent Fees**

Contractors wanting to do business with the Housing Authority must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

### **D. Sanctions**

Federal, state and local laws will be enforced by the Board of Commissioners and Executive Director. Appropriate sanctions for violations of the standards of conduct outlined in this policy will be imposed.

The appropriate sanction of Housing Authority officials and employees will be determined in cooperation with the General Counsel and the Human Resources Director. Sanctions may include civil and administrative remedies, up to and including termination.

For Contractors, the level of sanction will be determined in cooperation with the General Counsel and the Human Resources Director based upon the severity of the violation, but could include actions up to and including debarment from all local and federal procurements.

The Housing Authority will recover the value of anything received by an employee or a former employee in breach of the ethical standards by confiscating the items or by charging the violator for any and all gratuities received. All procedures will be in accordance with due process requirements as outlined in the Housing Authority's Personnel Policy, and existing law. Remedies against contractors may include suspension or debarment.

## **10. PROCUREMENT PLANNING**

Planning is essential to managing the procurement function properly. Hence, the Housing Authority will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the Housing Authority's procurement costs; reduce the Housing Authority's administrative costs; ensure that supplies and services are obtained without any need for

re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

**11. PROCUREMENT SUMMARY CHART**

The following dollar amounts determine who has the authority to authorize purchases, including awarding contracts, and what type of procurement method will take place (For Public Projects please see Section 13. below):

DOLLAR THRESHOLD	AUTHORITY	PROCUREMENT TYPE
Over \$250,000	Board of Commissioners	Sealed Bid or Competitive Proposal
\$25,001-\$250,000	Executive Director	Small
\$10,001-\$25,000	Department Directors	Small
\$51-\$10,000	Department Directors	Micro
\$50 and less	All Employees subject to Supervisor written approval	Petty

Federal regulation defines procurement in the following manner:

- \$10,000 or less = micro or micro-purchase threshold
- \$250,000 or less = small or simplified acquisition threshold

**12. PURCHASING METHODS**

**A. Petty Cash Purchases**

Purchases under \$50 may obtain a single quote if the quote is considered reasonable (e.g., based on recent research, experience, or purchases). To the extent practicable, the Housing Authority will distribute Petty Cash Purchases equitably among qualified vendors

Petty Cash Purchases may be handled through the use of a petty cash account. The Housing Authority will ensure that security is maintained and only authorized individuals have access to the account. The account will be reconciled and replenished by fiscal/accounting staff periodically.

**B. Micro Purchases**

Purchases at or below the Micro Purchase Threshold may obtain a single quote if the

quote is considered reasonable (e. g., based on recent research, experience, or purchases). To the extent practicable, the Housing Authority will distribute Micro Purchases equitably among qualified vendors. the term "practicable" used herein means that there are multiple vendors equally accessible to staff, the purchases will be distributed among the vendors and not left solely with one vendor. Nothing precludes the Contracting Officer from obtaining informal quotes for Micro Purchases to ensure that the purchase is made at the best price.

### **C. Small Purchases**

For any amounts above the Micro-purchase Threshold, but not exceeding the Simplified Acquisition Threshold, the Housing Authority shall obtain a reasonable number of quotes (preferably three). To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Purchases for amounts between the Micro-purchase and Simplified Acquisition Thresholds shall be obtained through the use of written or electronic invitations or solicitations that reasonably describe the product or service being procured. Quotes are to be obtained in writing. Award shall be made to the qualified contractor that provides the best value to the Housing Authority. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

A cost analysis is required for all projects greater than \$250,000.

### **D. Bid Splitting Prohibited**

The Authority shall not break down requirements aggregating more than the Micro-purchase Threshold into several smaller purchases that are less than the applicable threshold merely to: (1) permit use of the Small Purchase Procedures or (2) avoid any requirements that apply to purchases that exceed the Micro-purchase Threshold.

### **E. Sealed Bids**

Sealed bidding may be used for all contracts that exceed the Simplified Acquisition Threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under Sealed Bids, the Housing Authority will solicit bids publicly; and award a fixed-price contract (e.g., lump sum or unit price regardless of contractor's actual costs of performance) to the Responsible Bidder whose bid, conforming with all material terms and conditions of the Invitation for Bids ("IFB"), is the lowest in price. Sealed Bids is the preferred method for procuring construction, supply, and noncomplex service contracts that are expected to exceed the Simplified Acquisition Threshold.

(1) **Conditions for Using Sealed Bids.** The Housing Authority should use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or

more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

(2) **Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

(3) **Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on a bid spreadsheet, and then made available for public inspection. If equal low bids are received from responsible bidders, the Housing Authority has determined that the award will be made to the winner of a single coin flip. If only one responsive bid is received from a responsible bidder, award shall **not** be made unless the price can be determined to be reasonable, based on a documented cost or price analysis.

(4) **Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that an unintentional mistake was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging an obvious or unintentional mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the Housing Authority or fair competition shall not be permitted.

## F. Competitive Proposals

Unlike Sealed Bids, the Competitive Proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at anytime up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Authority, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price. The competitive proposals process, utilizing a Request for Proposals (RFP) or a Qualifications Based Section through a Request for Qualifications (RFQ), is the preferred method for procuring professional services that will exceed the Simplified Acquisition Threshold.

(1) **Conditions for Use.** 1) When the requirement cannot be described specifically enough to permit using the Sealed Bid process; 2) the nature of the requirement is such that the Agency needs to evaluate more than just price; or 3) the requested work lends itself to different approaches. Competitive proposals are the preferred method for procuring professional services that will exceed the Simplified Acquisition Threshold.

(2) **Form of Solicitation.** Other than A/E services, competitive proposals shall be solicited through the issuance of a Request for Proposals (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors (points or percentage) as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The Housing Authority may assign price a specific weight in the evaluation criteria or the Housing Authority may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

(3) **Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the Housing Authority shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

(4) **Negotiations.** Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the Housing Authority and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the Housing Authority's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered

for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The Contracting Officer may inform an offeror that its price is considered by the Housing Authority to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

(5) **Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the Housing Authority provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

(6) **A/E Services.** The Housing Authority must contract for A/E services using QBS procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services, though architectural/engineering firms are potential sources.

(7) In the event there's only one qualified response to a competitive procurement, please see Section 12.H. below.

#### **G. Cooperative Purchasing/Intergovernmental Agreements (Piggy-Back)**

The Housing Authority may participate in federal, State of California, or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The Housing Authority may also contract directly with a firm that has a competitively-solicited contract with a local government agency. The decision to use an intergovernmental agreement or competitively-solicited contract with a local government agency instead of conducting a direct procurement will be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Housing Authority may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.318(e).

## H. Non-Competitive Proposals

(1) **Condition for use.** Procurement by noncompetitive proposals (sole-source) may be used **only** when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, **and** if one of the following applies:

(a) The item is available only from a single source, based on a good faith review of available sources.

(b) The Executive Director has determined that an emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Housing Authority, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency. The Housing Authority may proceed at once to correct or address the threat. Any expenditures over \$250,000 will be reported at the next Board of Commissioners meeting.

(c) HUD authorizes the use of non-competitive proposals.

(d) After solicitation of a number of sources, competition is determined inadequate.

(2) **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

(a) Description of the requirement;

(b) History of prior purchases and their nature (competitive vs. noncompetitive);

(c) Statement as to the unique circumstances that require award by noncompetitive proposals;

(d) Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

(e) Statement as to efforts that will be taken in the future to promote competition for the requirement;

(f) Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and

(g) Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

### **13. PUBLIC PROJECTS (See Definition in Section 3.)**

#### **A. General**

The Housing Authority shall comply with the State Labor Code and the California Public Contract Code (PCC) regarding the solicitation of and contracting for Public Projects, including bid bonds, payment and performance bonds, prevailing wages (when applicable), and labor provisions.

(1) For Public Projects at or below the Micro-purchase Threshold, the Housing Authority may obtain a single quote if the quote is considered reasonable.

(2) For Public Projects between the Micro-purchase Threshold and the amount determined in PCC Section 22032 (a) (\$60,000 as of January 1, 2019), the project may be performed: 1) by the employees of the Housing Authority by force account; 2) by negotiated contract or 3) by purchase order. Methods 2) or 3) require obtaining a reasonable number of written quotes (preferably 3) or should otherwise be purchased in the most prudent and economical way feasible.

(3) For Public Projects above the amount provided in PCC Section 22032(a) up to the amount provided in PCC Section 22032(b) (\$200,000 as of January 1, 2019), the contract shall be let in accordance with the Informal Bid Procedures below.

(4) Public Projects above the amount provided in PCC Section 22032(b) shall be let to contract in accordance with the Formal Bid Procedures below.

#### **B. Informal Bid Procedures for Public Projects**

(1) Notice to contractors shall be provided in accordance with either paragraph a. or b. below, or both.

(a) The Housing Authority shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the California Uniform Construction Cost Accounting Commission (CUCCAC). All contractors on the list for the category of work being bid shall be mailed, faxed or e-mailed a notice inviting formal bids unless the product or service is proprietary. All mailing of notices to contractors pursuant

to this section shall be completed not less than 10 calendar days before bids are due.

(b) The Housing Authority may elect to mail, fax or e-mail a notice inviting formal bids to the appropriate construction trade journals specified for the Housing Authority in PCC Section 22036. The notice inviting informal bids may also be published in a newspaper of general circulation and on the Housing Authority's website.

(2) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.

(3) If a contract is awarded, it will be awarded to the lowest responsive and responsible bidder.

(4) The Housing Authority shall have the right to reject any or all of the bids received.

### **C. Formal Bid Procedures for Public Projects**

(1) In accordance with PCC Section 22037, a notice inviting formal bids shall be published in a newspaper of general circulation, printed and published, at least 14 calendar days before the date of opening the bids. Notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice inviting formal bids shall also be electronically mailed to all appropriate construction trade journals specified in PCC Section 22036. The notice shall be sent at least 15 calendar days before the date of opening the bids. Additionally, the Housing Authority may give such other notice as it deems appropriate such as, but not limited to, posting to the Housing Authority' website.

(2) All bids shall be presented under sealed cover. If awarded, a contract will be let to the responsible bidder who submits the lowest responsive bid. If equal low bids are received from responsible bidders, the Housing Authority has determined that the award will be made to the winner of single (1) coin flip.

(3) The Housing Authority shall have the right to reject any or all of the bids received.

## **14. COST AND PRICE ANALYSIS**

The Housing Authority shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

### **A. Independent Cost Estimates (ICE)**

For all purchases above the Micro-purchase threshold, the Housing Authority shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

## **B. Micro Purchases**

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order [\(see Section 19.A.1. below\)](#) or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

## **C. Small Purchases**

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

## **D. Sealed Bids**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the Housing Authority cannot reasonably determine price reasonableness, the Housing Authority must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

## **E. Competitive Proposals**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, The Housing Authority must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the Housing Authority must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

## **F. Contract Modifications**

A cost analysis, consistent with Federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non- Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of the Simplified Acquisition Threshold.

The Executive Director is authorized to approve contract modifications (i.e., change orders, addendums) not to exceed the cumulative authorization limit. A contract modification that raises the cumulative total of the procurement to an amount exceeding

the Executive Director's authorization limit, requires approval by the Board of Commissioners. For example, an \$80,000 change order to a \$200,000 contract would bring the cumulative procurement to \$280,000. This change order would require approval by the Board of Commissioners.

## **15. SOLICITATION AND ADVERTISING**

### **A. Method of Solicitation**

(1) Micro Purchases. The Housing Authority may contact only one source if the price is considered reasonable.

(2) Small Purchases. Quotes may be solicited through e-mail, fax, or by any other reasonable method.

(3) Sealed Bids and Competitive Proposals. Solicitation must be done publicly. The Housing Authority must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

(a) Advertising in newspapers, or other print mediums of local or general circulations and the Agency website.

(b) Advertising in various trade journals or publications (for construction). For Public Projects, the notice inviting formal bids shall also be electronically mailed to all appropriate construction trade journals specified in PCC Section 22036.

(c) E-Procurement. The Housing Authority may conduct its public procurements through the internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 through 200.326, State and local requirements, and this Procurement Policy.

### **B. Time Frame**

For purchases that exceed the Simplified Acquisition Threshold, the public notice should run not less than once each week for two consecutive weeks.

### **C. Form**

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

### **D. Time Period for Submission of Bids**

A minimum of 30 days should generally be provided for the preparation and submission

of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

**E. Cancellation of Solicitations**

(1) An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:

- (a) The supplies, services or construction are no longer required;
- (b) The funds are no longer available;
- (c) Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
- (d) Other similar reasons.

(2) A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:

- (a) The supplies or services (including construction) are no longer required;
- (b) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (c) All factors of significance to the Housing Authority were not considered;
- (d) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (e) There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
- (f) For good cause of a similar nature when it is in the best interest of the Housing Authority.

(3) The reasons for cancellation or rejection shall be documented in the procurement file and shall be provided upon request.

(4) A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

(5) If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the Housing Authority's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either:

(a) Re-solicit using an RFP; or

(b) Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the Housing Authority's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

(6) If problems are found with the specifications, the Housing Authority should cancel the solicitation, revise the specifications and resolicit using an IFB.

## **16. CREDIT CARD PURCHASING**

Credit card usage should follow the rules for all other Small Purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card.

When using credit cards, the Housing Authority should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amounts of purchases that are permitted with credit cards).

## **17. BONDING REQUIREMENTS**

The standards under this section apply to construction contracts that exceed \$25,000. The Housing Authority may require bonds for other contracts when deemed appropriate; however, non-construction contracts generally do not require bid bonds.

### **A. Bid Bonds**

For construction contracts exceeding \$25,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

### **B. Payment and Performance Bonds**

Unless otherwise provided in State law, prior to the execution of any contract for construction and equipment contracts exceeding \$25,000, the successful bidder shall furnish a performance and payment bond in a penal sum of 100% of the contract price.

### **C. Bond Requirements**

These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

## **18. CONTRACTOR QUALIFICATIONS AND DUTIES**

### **A. Contractor Responsibility**

The Housing Authority shall not award any contract until the prospective contractor, i. e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (2) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- (3) Have a satisfactory performance record;
- (4) Have a satisfactory record of integrity and business ethics;
- (5) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- (6) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- (7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD imposed Limited Denial of Participation.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

### **B. Suspension and Debarment**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors.

Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR 200.317 through 200.326) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

### **C. Contractor Lists**

All interested businesses shall be given the opportunity to be included on contractor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

For construction projects, in accordance with PCC Section 22034, the Housing Authority is required to establish a new list or update its existing list of qualified contractors by category or type of work they perform, at least once per calendar year. The Housing Authority will mail, fax or e-mail written notice to all construction trade journals designated for the Housing Authority under PCC Section 22036. The notice shall invite all licensed contractors to submit the name of their firm to the Housing Authority for inclusion on the Housing Authority's list of qualified bidders. The Housing Authority may include any contractor names on the list but must include all contractors who have properly responded in writing to the Housing Authority's written notice.

## **19. CONTRACT PRICING ARRANGEMENTS**

### **A. Contract Types**

Any type of contract which is appropriate to the procurement and which will promote the best interests of the Housing Authority may be used, provided that the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods may not be used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the Housing Authority. Please see Section 20 below on contract form and required General Counsel approvals.

For all cost reimbursement contracts, the Housing Authority must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

#### **A.1. PURCHASE ORDER THRESHOLD**

Internal purchase orders ("PO" or "Purchase Orders") will be required for all purchases that satisfy one of the following conditions:

- Any new procurement agreements with a maximum contracted amount of greater than Two Thousand Five Hundred Dollars (\$2,500.00) over the entire term of the contract, including extensions.
- Any existing procurement agreements with a maximum contracted amount of greater than Two Thousand Five Hundred Dollars (\$2,500.00) over the entire term of the contract, including extensions.

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- Any new expenditure or multiple expenditures, with a single vendor, that will not exceed Two Thousand Five Hundred Dollars (\$2,500.00) over a single fiscal year period.

### A2. PURCHASE ORDER BEST PRACTICES

Purchase Order utilization will follow all Housing Authority finance and budgeting best practices, including but not limited to the following:

- Approved by a Director before the actual purchase(s) of goods or services.
- Properly monitored by department stakeholder(s) throughout the life of the PO and the fiscal year.
- Reconciled and closed on a timely basis by Finance.

#### **B. Options**

Options for additional quantities or performance periods may be included in contracts, provided that:

- (1) The option is contained in the solicitation;
- (2) The option is a unilateral right of the Housing Authority;
- (3) The contract states a limit on the increased amount of and the overall term of the contract;
- (4) The options are evaluated as part of the initial competition;
- (5) The contract states the period within which the options may be exercised;
- (6) The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- (7) The options may be exercised only if determined to be more advantageous to the Housing Authority than conducting a new procurement.

## **20. CONTRACT CLAUSES**

A. All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the Housing Authority.

B. The forms HUD-5369, 5369-A, 5369-B, 5370, 5370-C, and 51915-A, which contain all HUD-required clauses and certifications for contracts that exceed the Simplified Acquisition Threshold, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by the Housing Authority.

C. The Housing Authority shall ensure that each contract contains the required

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contract clauses detailed within 2 CFR Section 200. 326 and II to Appendix II to 2 CFR Part 200.

D. All contracts above the Simplified Acquisition Threshold or where the Housing Authority template contract, approved by the Housing Authority General Counsel, is not used will be approved as to form by the Housing Authority General Counsel. All HUD-required clauses, forms, and certifications shall be used in all corresponding solicitations and contracts. Additional forms and certifications may be required by State and local laws depending on the funding source.

## 21. CONTRACT ADMINISTRATION

The Housing Authority shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost- reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

## 22. SPECIFICATIONS

### A. General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the Housing Authority's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

### B. Limitation

The following types of specifications shall be avoided:

(1) Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);

(2) Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

## **23. APPEALS AND REMEDIES**

### **A. General**

It is Housing Authority policy to resolve all procurement and contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

### **B. Appeals Procedure**

The Housing Authority shall adopt an informal bid/protest appeal procedure for contracts less than the Simplified Acquisition Threshold. The appeals procedure for solicitations/contracts that exceed the Simplified Acquisition Threshold shall be as follows:

(1) **Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after the contractor receives notice of intent to award the contract, or the protest will not be considered. All bid protests shall be in writing, specifying in detail the grounds of the protest, and providing evidence and supporting documents. Protests are to be submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

(2) **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in the Housing Authority. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

## **24. ASSISTANCE TO SMALL AND OTHER BUSINESSES**

### **A. Required Efforts**

As applicable, Consistent with Presidential Executive Orders 11625, 12138, and 12432, 24 CFR §200. 321, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the Housing Authority project are used when possible. Such efforts shall include, but shall not be limited to:

- (1) Including such firms, when qualified, on solicitation mailing lists;
- (2) Encouraging their participation through direct solicitation of bids or

## AHA PROCUREMENT POLICY

proposals whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

(5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Authority of the Department of Commerce;

(6) Including in contracts, to the greatest extent feasible, a clause requiring contractors to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 ( Section 3 businesses);

(7) Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above; and

(8) Requiring contractors to comply with applicable Section 3 economic opportunity requirements for applicable contracts.

Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in the Housing Authority's prime contracts and subcontracting opportunities.

### **25. BOARD APPROVAL OF PROCUREMENT ACTIONS**

The Housing Authority Board of Commissioners has delegated procurement authority to the Executive Director in the not to exceed amount of \$250,000. All procurements that exceed \$250,000 must be approved in writing by the Housing Authority Board of Commissioners prior to award and/or contract execution. It is the responsibility of the Executive Director to ensure that all procurement actions are conducted in accordance with the policies contained herein.

### **26. DELEGATION OF CONTRACTING AUTHORITY**

While the Executive Director is responsible for ensuring that the Housing Authority's procurements comply with this Policy, the Executive Director may delegate procurement authority as is necessary and appropriate to conduct the business of the Housing Authority. In accordance with this delegation of authority, the Executive Director shall have the right, where necessary, to establish operational procedures to implement this Policy.

### **27. DOCUMENTATION**

## AHA PROCUREMENT POLICY

A. The Housing Authority must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not be limited to:

- (1) Rationale for the method of procurement (if not self-evident);
- (2) Rationale of contract pricing arrangement (if not self-evident);
- (3) Reason for accepting or rejecting the bids or offers;
- (4) Basis for the contract price (if not self-evident);
- (5) A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- (6) Basis for contract modifications; and
- (7) Related contract administration actions.

B. The level of documentation should be commensurate with the value of the procurement.

C. Records are to be retained for a period consistent with the Housing Authority's Record Retention Policy. Certain funding sources or projects may require longer retention periods. Refer to the Housing Authority's Record Retention Policy.

## **28. FUNDING AVAILABILITY**

Before initiating any contract, the Housing Authority shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

Adopted by the Board of Commissioners on April 17, 2013.  
Revised by the Board of Commissioners on August 20, 2014.  
Revised by the Board of Commissioners on January 20, 2016.  
Revised by the Board of Commissioners on April 17, 2019.  
Revised by the Board of Commissioners on May 20, 2020.  
[Revised by the Board of Commissioners on June 15, 2022.](#)



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**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Bill Chapin, Acting Director of Rent Stabilization Programs

Date: June 15, 2022

Re: Accept the Monthly Overview Report for the Alameda Rent Program and Authorize the Executive Director or Designee to take all actions necessary to transfer the Program to the City, by the target date of October 1, 2022, including, if necessary, issuing a 180-day notice to the City.

---

## **BACKGROUND**

For outcomes of submissions reviewed, please see the attached monthly report for the Alameda Rent Program. Archived monthly reports are available at [www.alamedarentprogram.org](http://www.alamedarentprogram.org).

## **DISCUSSION**

### **Rent Registry**

On June 1, 2022, the Rent Program started the third annual program cycle since the launch of the Rent Registry in 2000. Pursuant to City Council Resolution 15771, the annual program fee assessed on each rental unit for 2022-2023 was updated to \$155 for fully regulated units and \$105 for partially regulated units. Resolution 15771 also set an earlier deadline for fee payment starting in 2022; landlords have until July 31, 2022, to pay any fees owed, after which late penalties will be applied. Landlords were notified of the start of the cycle via:

- 4,122 postcards mailed to property owners in late May, asking them to verify registration information and submit any new exemption requests before making payment.
- 3,948 fee invoices prepared by Rent Program staff to be mailed by the City of Alameda Finance Department.
- An email newsletter sent on May 31, 2022, to 5,514 email addresses associated with rental properties in the Rent Registry.
- Postings to the program website.



Additionally, an email newsletter sent to 3,303 recipients on May 31, 2022, and postings to the program website made the following announcements:

- The Annual General Adjustment (AGA) for units subject to rent control will be 3.5 percent effective September 1, 2022. The AGA is calculated at 70% of the percentage change in the Consumer Price Index for All Urban Consumers ("CPI-U") for the San Francisco-Oakland-Hayward area for the 12-month period ending in April.
- New relocation payment amounts for tenants who are permanently or temporarily displaced from rental units will go into effect on July 1, 2022. Pursuant to City Council Resolution 15602, relocation payments are updated annually based on the percentage change in the primary residence component of the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W") for the San Francisco-Oakland-Hayward area for the 12-month period ending April. For April 2022, the change in this CPI component was 0.8 percent.

## **Houseboat Regulation**

On April 28, 2022, the City Council passed Ordinance 3317, which provides protections for tenants of rental units lawfully docked at a marina, including floating homes and other maritime residential tenancies. The urgency ordinance extends most of the protections of the City's Rent Ordinance, including limits on rent increases and "no fault" terminations of tenancy, to these rental units, as well as the protections of the City's COVID-19 eviction moratorium. The Rent Program is reaching out to marina owners and managers, and providing them with registration materials.

## **Rent Increases**

As of May 1, 2022, landlords are permitted to serve tenants of units subject to rent control with a rent increase notice of no more than 2.7 percent, following the City Council's easing of a rent increase moratorium enacted in response to the COVID-19 pandemic. The Local Declaration of Emergency remains in place. Under current regulations, this means that landlords are still not eligible to implement increases that make use of previous years' "banked" rent increases, nor can they serve a notice of termination of tenancy based on Owner Move-In or an approved Capital Improvement Plan.

These recent changes to local rent regulations coupled with annual announcements have resulted in a high volume of calls from landlords, property managers, and tenants. Program staff continues to work with these stakeholders to process submissions, update registration information, address invalid rent increases, and answer questions.

On May 4, 2022, program staff provided the City Attorney's Office with enforcement reports documenting unresolved cases involving invalid rent increases, failure to pay

program fees, and additional cases of failure to register rental units for the 2021-2022 program cycle. These referrals were made with the expectation that the City Attorney's Office will take enforcement action to bring unregistered properties into compliance, resolve invalid rent increase issues and recoup uncollected annual program fees.

**Early Termination of Services Agreement**

On April 12, 2022, the City Council directed city staff to return with a plan to facilitate transitioning the Rent Program back to the City of Alameda as an "in house" component of the City Attorney's Office. On June 7, 2022, City staff presented the Council with a recommendation to set October 1, 2022, as the transition date. This requires the mutual early termination of AHA's Services Agreement, which is not due to expire until June 30, 2023.

At the June 7, 2022 meeting, the City Council approved the early termination of the Rent Program agreement. Staff will work with the City to complete the transfer of services and records in an orderly manner. AHA staff, General Counsel and the City Attorney have drafted and agreed upon a termination agreement which, similar to the transfer of the CDBG programs in 2020, sets out the timelines and various actions and responsibilities of each party in terminating the Services Agreement. The Board is asked to authorize the Executive Director or Designee to take all actions necessary to transfer the Program to the City, by the target date of October 1, 2022, including, if necessary, issuing a 180-day notice to the City.

**Staffing**

Effective June 1, 2022, Greg Kats assumed a new position with AHA as the Director of Administrative Services, and Rent Program Analyst Bill Chapin stepped in as the Acting Rent Program Director.

**Move Update**

The move to City Hall West is expected to begin on or around September 19, 2022, with the goal that staff will be fully set up and ready to work in the new space by September 26, 2022. This will allow time to clean up and close out the current offices for the expiration of the license at the end of the month.

**FISCAL IMPACT**

The program is operating within its budget for 2021-22.

**CEQA**

N/A

**RECOMMENDATION**

Accept the Monthly Overview Report for the Alameda Rent Program and Authorize the

Executive Director or Designee to take all actions necessary to transfer the Program to the City, by the target date of October 1, 2022, including, if necessary, issuing a 180-day notice to the City.

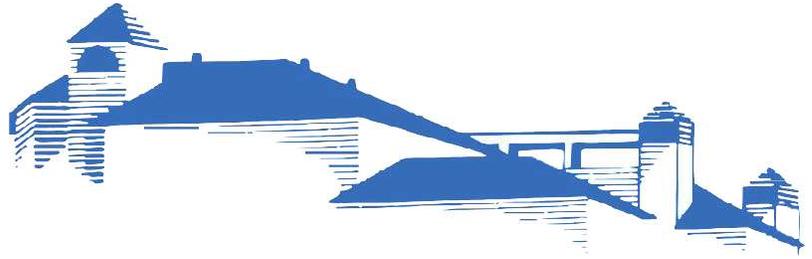
**ATTACHMENTS**

1. 2022.05- MONTHLY REPORT

Respectfully submitted,

A handwritten signature in blue ink that reads "Bill Chapin". The signature is written in a cursive style with a large initial "B".

Bill Chapin, Acting Director of Rent Stabilization Programs



# ALAMEDA RENT PROGRAM

## MAY 2022 REPORT

### FY 2021 -2022

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Capital Improvement Plans**

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[www.alamedarentprogram.org](http://www.alamedarentprogram.org)

Email: [rentprogram@alamedahsg.org](mailto:rentprogram@alamedahsg.org) • Phone/Fax: 510-747-4346

# Outreach

Staff serves individuals in the community via telephone, email, and in-person appointments. Informational workshops are currently offered online.

## Contacts

	PERSONALIZED SERVICE		INFORMATIONAL WORKSHOPS	WEBSITE	
	INDIVIDUALS CONTACTED	TOTAL INQUIRIES	ATTENDEES	USERS	TOTAL SESSIONS
JUL 2021	334	608	4	1,953	2,622
AUG 2021	278	495	2	1,817	2,493
SEP 2021	502	816	4	2,247	3,025
OCT 2021	296	445	3	1,842	2,665
NOV 2021	542	962	3	1,597	2,231
DEC 2021	470	854	7	1,559	2,210
JAN 2022	470	853	5	1,951	2,697
FEB 2022	403	810	4	1,763	2,536
MAR 2022	442	824	3	2,818	3,897
APR 2022	479	904	6	4,780	5,898
<b>MAY 2022</b>	<b>436</b>	<b>770</b>	<b>6</b>	<b>3,571</b>	<b>4,524</b>
JUN 2022					
<b>TOTAL</b>	<b>4,652</b>	<b>8,341</b>	<b>47</b>	<b>25,898</b>	<b>34,798</b>

## Activities

Mailed 4,181 postcards and letters to property owners, notifying them of the upcoming start of the annual program cycle and fee payment period and asking them to verify registration information.	Sent email newsletter to 3,303 recipients announcing the new Annual General Adjustment of 3.5% going into effect on September 1, 2022, and updated relocation payment amounts going into effect on July 1, 2022.	Sent email to 5,514 addresses associated with properties in the Rent Registry, informing them that annual program fee payments are now being accepted and announcing the 2022-2023 fee amounts.
Prepared 3,948 annual fee invoices to be mailed by the City of Alameda Finance Department.		

## Rent Increase Submissions & Petitions

Multi-family units built prior to February 1, 1995, are subject to a cap on the annual amount of a rent increase, known as the Annual General Adjustment (AGA). Landlords may petition for an upward adjustment in the rent, and tenants may petition for a downward adjustment. Petitions are heard by hearing officers who issue binding decisions.

In addition, tenants and landlords may request that program staff conduct a review of a) the calculation of the maximum allowable rent allowed by the AGA, b) the base rent and/or housing services included with the base rent that the landlord reported when registering the rental unit, or c) previous or pending rent increase notices to determine if they complied with all rent ordinances and regulations. Staff will work with the landlord to correct any registration errors. If the review shows the tenant has been paying more than the maximum allowed by the AGA, staff will direct the landlord to reset the rent and refund the overpayment. If the tenant received an invalid notice that is not yet effective, staff will direct the landlord to rescind the notice. Annually, the Rent Program sends letters to the landlord and tenant informing them of the maximum allowable rent and providing a deadline by which to file a request for review.

When a landlord issues a rent increase of more than 10 percent (typically for those units not subject to the AGA), the notice must be filed with the Rent Program. If the tenant chooses to vacate within 90 days, the tenant is entitled to a relocation payment.

SUBMISSIONS BY TYPE						
MONTH	LANDLORD INITIATED			TENANT INITIATED		TOTAL
	PETITION FOR UPWARD ADJUSTMENT	REQUEST FOR STAFF REVIEW	RENT INCREASE > 10%	PETITION FOR DOWNWARD ADJUSTMENT	REQUEST FOR STAFF REVIEW	
JUL 2021	0	0	0	2	1	3
AUG 2021	0	0	0	1	1	2
SEP 2021	1	0	0	2	3	6
OCT 2021	0	0	0	0	0	0
NOV 2021	1	0	0	1	1	3
DEC 2021	0	0	0	1	11	12
JAN 2022	0	2	0	6	12	20
FEB 2022	0	1	0	1	4	6
MAR 2022	0	2	0	0	4	6
APR 2022	1	2	0	4	22	29
<b>MAY 2022</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>5</b>
JUN 2022						
<b>TOTAL</b>	<b>3</b>	<b>7</b>	<b>0</b>	<b>19</b>	<b>63</b>	<b>92</b>

**PETITION OUTCOMES**

MONTH	UPWARD RENT ADJUSTMENT	DOWNWARD RENT ADJUSTMENT	PETITION DENIED	PETITION WITHDRAWN	PENDING	TOTAL
JUL 2021	0	1	0	1	0	2
AUG 2021	0	0	0	0	1	1
SEP 2021	0	0	1	1	1	3
OCT 2021	0	0	0	0	0	0
NOV 2021	1	0	0	1	0	2
DEC 2021	0	0	0	1	0	1
JAN 2022	0	3	0	1	2	6
FEB 2022	0	0	1	0	0	1
MAR 2022	0	0	0	0	0	0
APR 2022	0	0	0	1	4	5
<b>MAY 2022</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>
JUN 2022						
<b>TOTAL</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>6</b>	<b>9</b>	<b>22</b>

**STAFF REVIEW OUTCOMES**

MONTH	NO VIOLATION	REGISTRATION ERROR CORRECTED	RENT RESET & TENANT REFUNDED	INVALID NOTICE RESCINDED	REQUEST WITHDRAWN	PENDING	TOTAL
JUL 2021	0	0	0	1	0	0	1
AUG 2021	0	0	0	1	0	0	1
SEP 2021	2	0	0	1	0	0	3
OCT 2021	0	0	0	0	0	0	0
NOV 2021	1	0	0	0	0	0	1
DEC 2021	1	1	2	1	0	6	11
JAN 2022	2	4	0	0	3	5	14
FEB 2022	0	2	1	0	0	2	5
MAR 2022	0	3	0	0	2	1	6
APR 2022	1	9	2	0	5	7	24
<b>MAY 2022</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>4</b>
JUN 2022							
<b>TOTAL</b>	<b>8</b>	<b>20</b>	<b>5</b>	<b>4</b>	<b>10</b>	<b>23</b>	<b>70</b>

## Termination of Tenancy Submissions

Rent Ordinance 3250 prevents landlords from terminating a tenancy except for certain allowable grounds and requires a relocation payment in cases where the termination is not the fault of the tenant. Terminations based on these “no fault” grounds must be filed with the Rent Program. There are no filing requirements for terminations based on “for cause” grounds.

	ACTIVE			WITHDRAWN		PENDING	TOTAL
	OWNER MOVE-IN*	WITHDRAWAL FROM RENTAL MARKET	OTHER	FOR DEFICIENCY IN THE NOTICE	LANDLORD CHOSE TO RESCIND		
JUL 2021	0	1	0	2	0	0	3
AUG 2021	0	1	0	2	2	0	5
SEP 2021	0	1	0	0	0	0	1
OCT 2021	0	2	0	1	0	0	3
NOV 2021	0	2	0	0	0	0	2
DEC 2021	0	2	0	1	0	0	3
JAN 2022	0	1	0	3	0	0	4
FEB 2022	0	1	0	2	0	0	3
MAR2022	0	0	0	2	0	0	2
APR2022	0	0	0	2	0	1	3
<b>MAY2022</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>4</b>
JUN 2022							
<b>TOTAL</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>16</b>	<b>2</b>	<b>1</b>	<b>33</b>

\*The City Council adopted an urgency ordinance on April 21, 2020, that prohibits landlords from taking action to terminate a tenancy based on Owner Move-In until 30 days after the end of the Declaration of Local Emergency for the COVID-19 pandemic.

RELOCATION PAYMENT SUMMARY FOR ACTIVE CASES			
AVERAGE AMOUNT	TIME IN THE UNIT		
	0 to 5 years	5+ to 10 years	10+ years
\$9,903.67	2	1	0

## Buyout Agreement Submissions

A buyout agreement is a written agreement between a landlord and a tenant, by which a tenant agrees to vacate, usually in return for money. Rent Ordinance 3250 affords protection to tenants who are offered buyout agreements. Buyout agreements must be filed with the Rent Program. Staff review submissions to ensure that tenants have been advised of their rights. An agreement that does not satisfy all requirements of the Rent Ordinance is not effective, and the tenant may rescind the deficient agreement at any time.

	ACTIVE	DEFICIENT	TENANT CHOSE TO RESCIND	TOTAL
JUL 2021	3	0	0	3
AUG 2021	2	0	0	2
SEP 2021	1	1	0	2
OCT 2021	0	0	0	0
NOV 2021	1	0	0	1
DEC 2021	0	0	0	0
JAN 2022	2	0	0	2
FEB 2022	1	0	0	1
MAR 2022	2	1	0	3
APR 2022	2	0	0	2
<b>MAY 2022</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>4</b>
JUN 2022				
<b>TOTAL</b>	<b>18</b>	<b>2</b>	<b>0</b>	<b>20</b>

BUYOUT AGREEMENT SUMMARY FOR ACTIVE CASES			
<u>AVERAGE AMOUNT</u>	<u>TIME IN THE UNIT</u>		
	0 to 5 years	5+ to 10 years	10+ years
\$11,449.60	2	1	1

## Monitoring of Unit Restrictions

Certain restrictions are imposed on rental units after a tenancy is terminated based on grounds for which the tenant is not at fault. These restrictions apply regardless of a change in ownership. On an annual basis, program staff initiates monitoring of the unit to verify compliance with the restrictions while they remain in effect. These annual monitoring cases remain “ongoing” until staff receives sufficient documentation from the property owner.

	CASES INITIATED		ONGOING CASES		TOTAL UNITS MONITORED
	OWNER MOVE-IN	WITHDRAWAL FROM RENTAL MARKET	OWNER MOVE-IN	WITHDRAWAL FROM RENTAL MARKET	
JUL 2021	0	2	2	2	6
AUG 2021	0	6	0	1	7
SEP 2021	0	3	0	4	7
OCT 2021	2	4	0	1	7
NOV 2021	0	1	2	2	5
DEC 2021	1	0	0	0	1
JAN 2022	0	4	2	2	8
FEB 2022	0	0	1	3	4
MAR 2022	0	1	1	2	4
APR 2022	2	3	0	1	6
<b>MAY 2022</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>8</b>	<b>11</b>
JUN 2022					

## Capital Improvement Plans

To encourage landlords to improve the quality of the City’s rental housing stock, Resolution 15138 allows landlords to recover from tenants the cost of certain substantial improvements, amortized over time. In addition, landlords are required to file a Capital Improvement Plan whenever a tenant must be temporarily relocated or a tenancy terminated because of the work associated with capital improvements; however, landlords are currently prohibited from doing so by an urgency ordinance passed by the City Council in response to the COVID-19 pandemic.

No new applications for a Capital Improvement Plan were submitted in May 2022.

## Rent Registry

Open registration using the online Rent Registry has concluded. To date, 89% of properties have completed registration, representing 93% of rental units in Alameda. Staff continues to work with landlords to update information in the registry and process submissions.

RENT REGISTRY SUBMISSIONS PROCESSED						
MONTH	LATE REGISTRATION	UPDATED UNIT INFORMATION SHOWING AN INVALID RENT INCREASE	REQUEST TO EXEMPT UNIT FROM ANNUAL FEE	DOCUMENTATION SHOWING PROPERTY IS EXEMPT FROM REGULATION	CHANGE IN OWNERSHIP	TOTAL
JUL 2021	98	28	36	11	13	186
AUG 2021	8	2	21	5	20	56
SEP 2021	8	3	40	60	21	132
OCT 2021	19	4	11	11	14	59
NOV 2021	72	30	37	34	28	201
DEC 2021	72	17	13	6	35	143
JAN 2022	25	159	17	18	7	226
FEB 2022	36	153	17	10	12	228
MAR 2022	15	90	17	17	24	163
APR 2022	21	97	19	6	11	154
<b>MAY 2022</b>	<b>4</b>	<b>47</b>	<b>25</b>	<b>6</b>	<b>8</b>	<b>90</b>
JUN 2022						
<b>TOTAL</b>	<b>378</b>	<b>630</b>	<b>253</b>	<b>184</b>	<b>193</b>	<b>1,638</b>

## Other Appeals

A landlord or tenant may appeal a determination by the Rent Program Administrator concerning other matters under the Rent Ordinance, such as whether the ordinance applies to a particular dwelling unit or whether a tenant who has been displaced is entitled to relocation payments. Appeals are heard by hearing officers who issue binding decisions, subject to judicial review.

In May 2022, a hearing officer issued a decision in a landlord's appeal of a determination that temporary relocation payments were owed to a tenant. The hearing officer found that the landlord had provided the tenant with a comparable unit and owed no additional payments, and ordered the tenant to reimburse the landlord for payments already made.



**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners  
From: Tonya Schuler-Cummins, Principal Management Analyst  
Date: June 15, 2022  
Re: Moving To Work Presentation.

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**BACKGROUND**

On March 23, 2022, the Housing Authority of the City of Alameda (AHA) received its executed Annual Contributions Contract (ACC) from the Department of Housing and Urban Development (HUD) designating AHA as a Moving To Work (MTW) agency.

**DISCUSSION**

The AHA will have to prepare its software systems, train staff, and revise its policies to implement MTW activities after receiving HUD approval. The attached presentation includes MTW activities being considered for submission to HUD for approval along with a tentative timeline for MTW implementation.

**FISCAL IMPACT**

No fiscal impact. For information only.

**CEQA**

Not applicable.

**RECOMMENDATION**

Accept the presentation.

**ATTACHMENTS**

1. 10.A. Moving To Work Presentation June 2022

Respectfully submitted,



A handwritten signature in black ink, appearing to read 'Tonya Schuler-Cummins'. The signature is fluid and cursive, with the first name 'Tonya' being more prominent and stylized.

Tonya Schuler-Cummins, Principal Management Analyst

# MTW Activities

Board of Commissioners' Meeting

June 15, 2022

# Tables Summarized Data

- Following tables are summarized
- One column includes the page in the MTW Operations Notice that gives detailed information of activity
- Tables do not include any activities that were prohibited by Landlord Incentive Cohort PIH Notice

# Activities Included in MTW Application

ACTIVITY	NAME	MTW Operations Notice Page Number
COHORT 4.2	Front-end Vacancy Loss Payment	Not applicable; described in PIH Notice 2021-03 page 6
4.a.	Vacancy Loss	47
4.c.	Other Landlord Incentives	47
5.a.	Pre-Qualifying Unit Inspections	48

# Front-end Vacancy Loss Payments (cohort 4.2)

- To incentivize a landlord's initial or continued participation in the HCV program, the agency is authorized to make additional payments to the landlord in circumstances where the previous tenant was not an HCV participant.
- Safe Harbors:
  - Payments made to the landlord must be equal or lesser than one month of the contract rent.
  - The payment must be made to the landlord when the next HAP contract is executed between the owner and the agency.
  - The agency must update its Administrative Plan to reflect the vacancy loss policy.

## Vacancy Loss (activity 4.a.)

- To incentivize a landlord's continued participation in the HCV program, the agency is authorized to make additional payments to the landlord.
- Between HCV participants
- Safe Harbors:
  - Payments made to the landlord must be equal to no more than one month of the contract rent.
  - Payment must be made to the landlord when the next HAP contract is executed between the owner and the PHA.
  - Admin Plan must be updated to reflect the vacancy loss policy.

## Other Landlord Incentives (activity 4.c.)

- To incentivize new landlords to join the HCV program, the agency may provide incentive payments. Agencies may target incentive payments to landlords leasing properties in high opportunity neighborhoods or in areas located where vouchers are difficult to use as defined in the Admin Plan.
- Safe Harbors:
  - Payments made to landlord must be equal to no more than 1 month of the contract rent.
  - Payment must be made to the landlord when the HAP contract is executed between the owner and the PHA.

# Landlord Incentive Ideas

- HUD recommends new landlords
  - Could offer higher 1<sup>st</sup> time incentives
- Could do new units
- Based on bedroom size versus flat amount
  - Could offer more for units that are needed more: 1- and 2- bedroom units
- Incentives for ADA accessible units
- Additional incentive for passing HQS the first time
- Exclude: AHA/AAHC-owned; tax credit; other income restricted units

# Pre-Qualifying Unit Inspections (activity 5.a.)

- The agency may allow pre-qualifying unit inspections (also known as a pre-inspection).
- Safe Harbors:
  - The pre-inspection must have been conducted within 90 days of the participant occupying the unit.
  - The participant must be able to request an interim inspection.
  - HQS inspection standards must not be altered as found in 24 CFR 982.401.

# Other Activities to Implement Year 1

ACTIVITY	NAME	MTW Operations Notice Page Number
2.b.	Payment Standards - FMR	45
3.b.	Alternative Reexamination Schedule for Households	46
3.d.	Self-Certification of Assets	46
5.d.	Alternative Inspection Schedule	49
9.a.	Increase PBV Program Cap	53
9.c.	Elimination of PBV Selection Process	53

# Payment Standards – FMR (activity 2.b.)

- The agency is authorized to adopt and implement any reasonable policy to establish payment standards based upon FMR.
- Safe Harbors:
  - Payment standard must be between 80-120% of the SAFMR.
  - Agency must implement an impact analysis.
  - Agency must implement a hardship policy.

# Alternative Reexamination Schedule for Households (activity 3.b.)

- The agency may establish an alternative reexamination schedule for households.
- Safe Harbors:
  - Must occur at least once every three years.
  - Must allow at least one interim adjustment per year at the request of the household, if the household gross income has decreased 10% or more.
  - Implement an impact analysis.
  - Implement a hardship policy.

# Self-Certification of Assets (activity 3.d.)

- At reexamination, the agency may allow the self-certification of assets.
- Safe Harbor:
  - Self-certification of assets only up to \$50,000

# Alternative Inspection Schedule (5.d.)

- The agency is authorized to establish a local inspection schedule for all or a portion of its HCV units.
- Safe Harbors:
  - Units must be inspected at least once every 3 years.
  - The participant must be able to request an interim inspection.
  - HQS inspection standards must not be altered.
  - HUD must be able to conduct or direct the agency to perform an inspection at any time for health and safety, as well as accessibility, purposes.

## Increase PBV Program Cap (activity 9.a.)

- The agency may increase the number of authorized units that it project-bases.
- Safe Harbor:
  - The agency must not project-base more than 50% of the lower of either the total authorized units or annual budget authority.

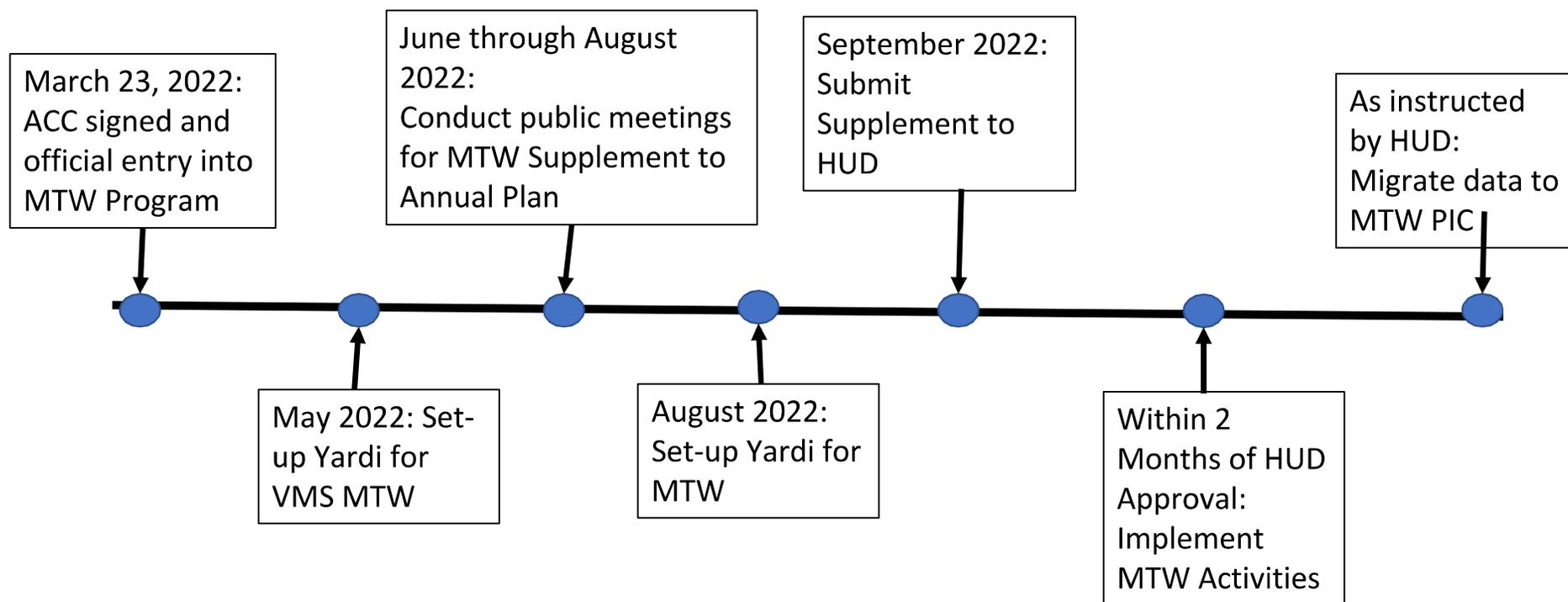
# Elimination of PBV Selection Process (activity 9.c.)

- The agency may eliminate the selection process in the award of PBVs to properties owned by the agency that are not public housing without engaging in an initiative to improve, develop, or replace a public housing property or site.
- Safe Harbor:
  - A SLR must be conducted.
  - The agency must complete site selection requirements.
  - HQS inspections must be performed by an independent entity.
  - The agency is subject to Notice PIH 2013-27 were applicable.
  - Property must be owned by a single-asset entity of the agency.

# Other Activities to Implement After Year 1

ACTIVITY	NAME	MTW Operations Notice Page Number
1.j.	Alternative Utility Allowance	41
1.n.	Utility Reimbursements	42
1.u.	Standard Deductions	43
9.e.	Alternative PBV Unit Types (shared housing and manufactured housing)	54
10.b.	Alternative Structure for Establishing Program Coordinating Committee	56
10.c.	Alternative Family Selection Procedures (FSS)	56
10.d.	Modify or Eliminate the Contract of Participation	56
10.e.	Policies for Addressing Increases in Family Income (FSS)	56
11.b.	Policies for Addressing Increases in Family Income (MTW Self-Sufficiency Program)	58

# Tentative MTW Implementation Timeline (Timeline is dependent on HUD )



# Questions or Discussion





**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Vanessa Cooper, Executive Director

Date: June 15, 2022

Re: Establish a Nominating Ad Hoc Committee for the Appointment of the Chair and Vice Chair of the Board of Commissioners for the Period of July 1, 2022 - June 30, 2023.

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**BACKGROUND**

Section 4 of the Rules and Procedures of the Housing Authority states: "The Chair and Vice Chair shall be elected by the Board of Commissioners from its membership at the first meeting after July 1 of each year when the Commission is fully constituted."

**DISCUSSION**

The Board is asked to appoint up to three Board members to constitute the ad hoc committee. This committee will report back to the Executive Director with recommendations no later than two weeks before the first meeting after July 1, 2022.

**FISCAL IMPACT**

N/A

**CEQA**

N/A

**RECOMMENDATION**

Establish a nominating ad hoc committee for the appointment of the Chair and Vice Chair of the Board of Commissioners for the period July 1, 2022 - June 30, 2023.

**ATTACHMENTS**

None

Respectfully submitted,



*Vanessa Cooper*

Vanessa Cooper, Executive Director



**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Sylvia Martinez, Director of Housing Development

Date: June 15, 2022

Re: Approve Amended and Restated Island City Development (ICD) Bylaws and Accept Names for Appointee to the ICD Board.

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### **BACKGROUND**

Island City Development (ICD) is a non-profit public benefit corporation affiliated with the Housing Authority of the City of Alameda. The Corporation's sole activity is to benefit and support the mission of the Housing Authority and the City of Alameda (Housing Authority). ICD achieves its charitable purposes by developing housing for low-income households.

ICD was incorporated in 2014 to increase the role that the Housing Authority plays in affordable housing development in the City of Alameda. The ICD Board of Directors is made up of the Housing Authority Executive Director, a current Housing Authority Commissioner, and a current or past employee of the Housing Authority.

### **DISCUSSION**

As the development arm of the Housing Authority, ICD is frequently the applicant, or sponsor on applications for public and private sources of funds. In a recent application to the City of Alameda for HOME/CDBG funds, staff noted a requirement that the Board of Directors of the nonprofit sponsor meet at least quarterly. Currently, the ICD bylaws call for meetings at least twice a year (although in the past few years it has met significantly more often). To conform with the funding requirement, staff proposes that ICD amend and restate its bylaws to allow for a requirement to meet quarterly.

A related change is to update the timing of the Annual report. As currently written, it should be provided at the first regular meeting of the fiscal year. The move to quarterly meetings adds to the regular meeting schedule. The ICD audit is typically approved in November, so the annual report should be provided within 12 months of the fiscal year end. This change conforms to current practice.

A redlined version of the proposed amended bylaws is included for review. The ICD Board will ratify the proposed changes to the bylaws to be effective after receipt of



written approval from the Housing Authority Board of Commissioners via approved minutes. The Board is also asked to propose names for the Board appointee to start on the ICD Board effective July 1, 2022.

**FISCAL IMPACT**

None.

**CEQA**

Not applicable.

**RECOMMENDATION**

Approve Amended and Restated ICD Bylaws.

**ATTACHMENTS**

1. Attach 1 Draft ICD Amended and Restated Bylaws

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Sylvia Martinez', with a stylized flourish at the end.

Sylvia Martinez, Director of Housing Development

DRAFT

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AMENDED AND RESTATED  
BYLAWS OF  
ISLAND CITY DEVELOPMENT  
A California Nonprofit Public Benefit Corporation

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ARTICLE 1.  
NAME

Section 1.1 Name. The name of this Corporation is Island City Development (the "Corporation").

ARTICLE 2.  
OFFICE

Section 2.1 Principal Office. The principal office for the transaction of affairs and activities of the Corporation is located at 701 Atlantic Avenue, Alameda, CA 94501. The Board of Directors of the Corporation (the "Board") may change the principal office from one location to another. Any change shall be noted on these Bylaws, or this section may be amended to state the new location.

Section 2.2 Other Offices. The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to conduct its activities

ARTICLE 3.

Section 3.1 Supporting Organization Under IRC §509(a)(3). This Corporation has been organized and shall operate exclusively to support the Housing Authority of the City of Alameda ("HACA" or "AHA") and shall be operated in connection with that organization as specified in Internal Revenue Code §509(a)(3). If AHA (1) shall cease to be an organization described in Internal Revenue Code §170(b)(1)(A)(iv), §501(c)(3) and §509(a)(1) or §509(a)(2), or (2) shall substantially abandon the charitable purposes that this Corporation is organized to support, the directors shall designate a publicly supported charitable organization as described in Internal Revenue Code §170(b)(1)(A)(iv), §501(c)(3) and §509(a)(1) or §509(a)(2), in substitution for AHA, for purposes of Article 2 of the Articles of Incorporation.

ARTICLE 4.  
MEMBERS

Section 4.1 Members. This Corporation shall have no members.

ARTICLE 5.  
DIRECTORS

Section 5.1 Powers. Subject to the provisions and limitations of the California Nonprofit Public Benefit Corporation Law and any other applicable laws, all powers and

activities of the Corporation shall be exercised directly by or under the ultimate direction of the Board.

Section 5.2 Borrowing: Funds. The Board shall have the power to borrow money and incur indebtedness on the Corporation's behalf and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidence of debt and securities.

Section 5.3 Number of Directors. The number of directors shall be three (3) unless a greater or lesser number is authorized by the Executive Director of AHA.

Section 5.4 Compensation and Reimbursement of Directors. The directors shall serve without compensation though they may be reimbursed for their expenditure of monies on behalf of the Corporation.

Section 5.5 Restriction on interested Persons as Directors. No more than forty-nine percent (49%) of the persons serving on the Board of Directors may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, and (b) father, mother, parent, son, daughter, child, brother, sister, sibling, uncle, aunt, first cousin, nephew, niece, husband, wife, registered domestic partner, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, other relation by marriage, half-brother, half-sister, descendant or his/her partner of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the Corporation.

Section 5.6 Appointment and Qualification of Directors. Subject to Sections 5.9 and 5.10 below and as set forth below, the initial directors shall be appointed by the AHA's Board of Commissioners, and all subsequent directors shall be appointed by the Executive Director of AHA. The Executive Director of AHA shall appoint directors meeting the following criteria. (each a "Designated Director"):

- (a) A current Housing Authority of the City of Alameda Commissioner.
- (b) The Current Executive Director of the Housing Authority of the City of Alameda, and
- (c) A current or past employee of the Housing Authority of the City of Alameda

If a Designated Director (except a director described in (c) above) ceases to be an employee or Commissioner of AHA or, as applicable, a member of the executive cabinet of AHA such person shall automatically cease to be a director of the Corporation. If one or more Designated Director positions shall cease to exist (such as by reorganization of AHA or

otherwise), the Executive Director of AHA shall designate one or more new Designated Director positions, as needed, and shall appoint directors to those positions. If there shall cease to be either an acting or permanent Executive Director of AHA, the duties and powers of the Executive Director of AHA under these Bylaws shall be exercised by the Board of AHA.

Section 5.7 Term. The initial directors of the Corporation shall serve for a term beginning on the date on which the Articles of Incorporation of the Corporation are filed with the Secretary of State and ending two (2) years from the date of filing. At such time and thereafter, the Executive Director of AHA shall appoint successor directors to serve as directors of the Board for a term of two (2) years.

Section 5.8 Vacancies on the Board. A vacancy shall be deemed to exist in the event that the actual number of directors is less than the authorized number for any reason.

Section 5.9 Removal of Directors. The Executive Director of AHA may remove any director with or without cause.

Section 5.10 Resignations of Directors. Except as provided below, any director may resign by giving written notice to the president or secretary of the Board. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. Except on notice to the Attorney General of California, no director may resign if the Corporation would be left without a duly elected director or directors.

Section 5.11 Filling Vacancies. Vacancies shall be filled as provided for in Section 5.6.

Section 5.12 Meetings of the Directors. Regular meetings shall be held at least ~~quarterly twice a year~~ at such time and place as shall from time to time be fixed by the directors for the purpose of organization, election of officers and the transaction of other business.

Section 5.13 Meetings by Telecommunication. Any Board meeting may be held by conference telephone, video screen communication, or other communications equipment. Participation in a meeting under this Section shall constitute presence in person at the meeting if both the following apply:

- (1) Each member participating in the meeting can communicate concurrently with all other members.
- (2) All persons participating in the meeting can hear one another.
- (3) Each member is provided the means of participating in all matters

before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation.

Section 5.14 Special Meetings. Special meetings of the Board for any purpose may be called at any time by the president or only two (2) directors.

Section 5.15 Director Voting. Each director shall have one vote on each matter presented to the Board of Directors for action. No director may vote by proxy.

Section 5.16 Notice. Subject to public law requirements, notice of regular and special meetings shall be given to each director not less than four (4) days prior to the meeting if delivered by first class mail or not less than seventy-two (72) hours prior to the meeting if the notice is delivered (1) personally, (2) by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, or by electronic transmission, either directly to the director or to a person at the director's office who would reasonably be expected to communicate that notice promptly to the director; (3) by facsimile; (4) by electronic mail; or (5) by other electronic means. All such notices shall be given or sent to the director's address, telephone number, facsimile number or electronic mail address as shown on the Corporation's records. The notice must state the date and time of the meeting and the place of the meeting if it is other than the principal office of the Corporation. When required, public notice of a meeting shall be posted pursuant to Government Code Sections 54950-54963.

Section 5.17 Waiver of Notice. Notice of a meeting need not be given to any director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.

Section 5.18 Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn. Every action taken or decision made by a majority of the directors present at a duly held meeting of which a quorum is present shall be the act of the Board, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to (1) approval of contracts or transactions in which a director has a direct or indirect

financial interest, (2) approval of certain transactions between corporations having common directorships, (3) creation of and appointments to, committees of the Board, and (4) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, despite the withdrawal of some, directors from that meeting, if any action

taken of decision made is approved by at least a majority of the required quorum for that meeting.

Section 5.19 Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment to another time and place shall be given to the directors who were not present at the time of the adjournment.

Section 5.20 Action Without a Meeting. Any action that the Board is required or permitted to take may be taken without a meeting if all members of the Board consent in writing to the action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All such consents shall be filed with the minutes of the proceedings of the Board.

Section 5.21 Committees of Directors. The Board may, by resolution adopted by a majority of the directors then in office, designate one (1) or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board. Appointments to such committees shall be by majority vote of the directors then in office. Any committee, to the extent provided in the resolution, shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:

- (a) Fill vacancies on the Board or on any committee;
- (b) Fix compensation of directors for serving on the Board or any committee;
- (c) Amend or repeal bylaws or adopt new bylaws;
- (d) Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (e) Appoint any other committees of the Board or the members of these committees; or
- (f) Approve any self-dealing transaction.

Section 5.22 Committee Meetings. Meetings and actions of committees shall be governed by and held and taken in accordance with the provisions of this Article IV concerning meetings of directors, with such changes in the context of these Bylaws as are necessary to substitute the committee and its members for the Board and its members. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board may adopt rules for the governance of any committee not inconsistent with the provisions of Bylaws concerning meetings of directors.

Section 5.23 Standard of Care- General. A director shall perform the duties of a director, including duties as a member of any committee of the Board on which the director may serve, in good faith, in a manner such director believes to be in the best interest of this Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One (1) or more officers or employees of the Corporation whom the director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as in any such case, the director acts in good faith, after reasonable inquiry when the need thereof is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Except in the case of a self-dealing director, as described in Section 5.25 of these Bylaws, a person who performs the duties of a director in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which the Corporation, or assets held by it, are dedicated.

Section 5.24 Standard of Care-Investments. Except with respect to assets held for use or used directly in carrying out this Corporation's charitable activities, in investing, reinvesting, purchasing, acquiring, exchanging, selling and managing this Corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of this Corporation's capital. The provisions of Section 5.23 of these Bylaws shall apply to this Section.

Section 5.25 Self-Dealing Transactions. Except as provided below, the Board shall not approve a self-dealing transaction. A self-dealing transaction is one in which the Corporation is a party and in which one (1) or more of the directors has a material financial interest as defined in the Corporation's Conflict of Interest policy or if no such policy exists then as it is generally defined, or a transaction between this Corporation and any entity in which one (1) or more of its directors has a material financial interest as defined in

the Corporation's Conflict of Interest policy or if no such policy exists then as it is generally defined. The Board may approve a self-dealing transaction if a majority of the Board, not including the self-interested director, determines that the transaction is fair and reasonable to this Corporation and, after reasonable investigation under the circumstances, determines that it could not have secured a more advantageous arrangement with reasonable effort under the circumstances.

Section 5.26 Inspection. Every director shall, at his or her own expense, have the absolute right at any reasonable time during the business hours of the Corporation to inspect and copy all books, records, and documents, and to inspect the physical properties of this Corporation.

## ARTICLE 6. OFFICERS

Section 6.1 Officers of the Corporation. The officers of the Corporation shall be a president, vice-president, and a secretary/treasurer. Each appointed officer shall have the title and authority, hold office for the period, and perform the duties specified in the Bylaws or established by the Board. The Corporation may also have at the Board's discretion, such other officers as may be appointed in accordance with Section 5.3 of these Bylaws. Any number of offices may be held by the same person, except that the secretary/treasurer may not serve concurrently as the president.

Section 6.2 Appointment of Officers. Except as otherwise provided herein, the Board shall designate all officers of the Corporation for terms of two (2) years or until their successors are designated and qualified. Officers of the Corporation shall be the Executive Director of AHA; a current Commissioner of AHA, and a current AHA employee. An officer's term shall be ended and his or her position deemed vacant upon the officer's ceasing to be an Executive Director or Commissioner of AHA.

Section 6.3 Other Officers. The Board may appoint or may authorize the president or other officer, to appoint any other officers that the Corporation may require. Each officer so appointed shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined by the Board.

Section 6.4 Removal of Officers. Any officer may be removed with or without cause by the Board or the Executive Director of AHA at any time.

Section 6.5 Resignation of Officers. Any officer may resign at any time by giving written notice to the president or secretary of the Corporation. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall not affect the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 6.6 Vacancies in Office. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided, however, that vacancies may be filled as they occur.

Section 6.7 Reimbursement of Expenses. The Corporation shall provide reimbursement for monies expended on behalf of the Corporation by its officers.

Section 6.8 President. The president shall serve as the chief executive officer of the Corporation and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Board. The president shall preside at meetings of the Board and shall exercise and perform such other powers and duties as may from time to time be assigned to the president by the Board. Subject to the control of the Board, the president shall be the general manager of the Corporation and shall supervise, direct, and control the Corporation's activities, affairs, and officers. The president shall have such other powers and duties as the Board of the Bylaws may require.

Section 6.9 Secretary. The secretary shall have the following duties:

(a) The secretary shall keep, or cause to be kept, at the Corporation's principal office or such other place as the Board may direct, a book of minutes of all meetings, proceedings, and actions of the Board and of committees of the Board. The minutes of the meetings shall include the time and place that meeting was held, whether the meeting was annual, regular, or special, and, if special, how authorized and the notice given.

(b) The secretary shall keep or cause to be kept at the Corporation's principal office, a copy of the Articles of Incorporation and Bylaws of the Corporation, as amended to date.

(c) The secretary shall give, or cause to be given, notice of all meetings of the Board and of committees of the Board required by these Bylaws to be given. The secretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

Section 6.10 Treasurer. The treasurer shall have the following duties:

(a) The treasurer shall be the chief financial officer of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. The treasurer shall send or cause to be given to the directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board. The books of account shall be open to inspection by any director at all reasonable times during the business hours of the Corporation.

(b) The treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the Board may designate, shall disburse the Corporation's funds as the Board may order, shall render to the president and the Board, when requested, an account of all transactions as treasurer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as the Board or the Bylaws may prescribe.

## ARTICLE 7 MISCELLANEOUS

Section 7.1 Fiscal Year. The fiscal year of this Corporation shall be determined by resolution of the Board.

Section 7.2 Corporate Seal. This Corporation may have a seal which shall be specified by resolution of the Board. The seal may be affixed to any corporate instruments, as directed by the Board or any of its officers, but failure to affix it shall not affect the validity of the instrument.

Section 7.3 Contracts. All contracts entered into on behalf of this Corporation must be authorized by the Board, or, where the contract is for less than Two Hundred Fifty Thousand Dollars (\$250,000), by the president

Section 7.4 Execution of Checks. Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of the Corporation shall be signed by such individuals as are authorized by the Board.

Section 7.5 Indemnification. This Corporation shall indemnify its directors, officers, employees, and agents, including persons formerly occupying any such position, to the fullest extent permitted by law, against all expenses, judgments, fines and other amounts actually and reasonably incurred by them in connection with any threatened, pending or completed action or proceeding, whether it is civil, criminal, administrative or investigative.

In all cases where indemnification is sought, the Corporation shall be subject to the following restrictions and requirements:

(a) Where the action or proceeding *is* brought on behalf of the Corporation or involves self-dealing transactions, as defined in Section 5.25 of these Bylaws, the Corporation shall not indemnify against amounts paid in settlement or judgment amounts, but shall, upon the express authorization of the Board, indemnify the director, officer, employee or agent against expenses incurred in defense of an action arising from his or her relation to the Corporation. To indemnify in such cases the Board must find the person met the

statutorily prescribed standard of care by acting (1) in good faith, (2) in the best interests of the Corporation, and (3) with the care of an ordinarily prudent person.

(b) Where the person seeking indemnification under this section has been held liable to the Corporation or has settled his or her liability to the Corporation, the Corporation shall not indemnify against expenses without the approval of the court or the Attorney General.

(c) The Board shall determine whether the person seeking indemnification has acted in accordance with the standard of care set forth in subsection (a) of this section by a majority vote of a quorum consisting of disinterested directors. The termination of any proceeding in a manner adverse to the defendant seeking indemnification shall not create a presumption that such person failed to meet the standard of care.

(d) Where the person seeking indemnification has been successful on the merits in defense of any action or proceeding brought on behalf of the Corporation or in defense of any claim or issue involved in such action or proceeding, the Corporation shall indemnify against all expenses actually or reasonably incurred.

(e) The Corporation shall not advance any money to the person seeking indemnification for the purpose of defending against any action or proceeding without the receipt of an undertaking by such person to repay all advances unless it is ultimately determined that he or she is entitled to indemnification.

Section 7.6 Insurance. The Board may adopt a resolution authorizing the purchase of insurance on behalf of any director, officer, employee or agent of this Corporation against any liability asserted against or incurred by the director, officer, employee or agent in such capacity or arising out of the director's, officer's, employee's or agent's status as such, whether or not this corporation would have the power to indemnify the director, officer, employee, or agent against that liability under law; except, the Corporation may not purchase insurance to protect self-dealing directors (as defined in Section 5.25 of these Bylaws) from liability.

Section 7.7 Annual Report to Directors. The president shall furnish a written report ~~at the first regular meeting of the~~ within twelve (12) months of the fiscal year end to all directors of this Corporation containing the following information:

(a) The assets and liabilities, including the trust funds, of this Corporation as of the end of the fiscal year;

(b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;

(c) The revenue or receipts of this Corporation both unrestricted and restricted for particular purposes, for the fiscal year;

(g) The expenses or disbursements of this Corporation, for both general and restricted purposes during the fiscal year.

(e) An independent accountants' report or, if none, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the corporation's books and records.

The president must furnish a written report to all directors that lists every transaction during the prior fiscal year involving Fifty Thousand Dollars (\$50,000) or more between this Corporation or a subsidiary and any director or officer of this Corporation or a subsidiary. The report must disclose the name of the director or officer and the person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest. The president must also furnish an annual written report to all directors disclosing the amount and circumstances of any indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000) paid during the prior fiscal year to any officer or director of the Corporation.

This requirement of an annual report shall not apply if the corporation receives less than \$25,000 in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all directors and to any member who requests it in writing. If the Board approves, the corporation may send the report and any accompanying material sent pursuant to this section by electronic transmission. If a report sent to the Attorney General in compliance with the requirements of Government Code Sections 12580-12599.7 includes the information required on the annual report, then the corporation may furnish a copy of its report to the Attorney General in lieu of the annual report whenever it is required to furnish an annual report.

Section 7.8 Amendment of Bylaws. The Bylaws may be amended or repealed and new Bylaws adopted by the vote of a majority of all the members of the Board, provided that any amendment to the Bylaws must receive the prior written approval of AHA's Board of Commissioners. Such amended or newly adopted Bylaws shall take effect immediately.

Section 7.9 Applicable Law. This Corporation shall be subject to any and all applicable state, federal and local laws, including, but not limited to, such laws as may be applicable as a result of the Corporation's affiliation with AHA.

CERTIFICATION OF SECRETARY

I, the undersigned, do hereby certify:

- (1) That I am the duly elected and acting Secretary of Island City Development, a California nonprofit public benefit Corporation; and
- (2) That the foregoing Bylaws, comprising eleven (11) pages, constitute the Bylaws of such Corporation as adopted by the Incorporator on ~~March 16, 2022~~ ~~October 27, 2014~~, and ratified by the directors of the Corporation at a duly constituted meeting held on ~~December 17, 2014~~ March 16, 2022.

IN WITNESS THEREOF, I have hereunto subscribed my name, this \_\_\_\_ day of \_\_\_\_\_, 2022.

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**Janet Basta, Secretary**



**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Sylvia Martinez, Director of Housing Development

Date: June 15, 2022

Re: Authorize the Executive Director to Negotiate and Execute a Purchase and Sale Agreement for 1628 Webster Street.

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**BACKGROUND**

In fall 2020, AHA was approached by the owner of the Hawthorn Suites on Webster Street, with an opportunity to convert the hotel to residential use. In December 2020, staff received permission from the Board to explore this site as either permanent supportive housing or a senior development. The Board and staff have considered options to purchase and convert this property as an adaptive reuse site. At this time, new funding programs from the State of California mean that the property is taking on new feasibility.

**DISCUSSION**

The purchase and sale agreement under consideration provides a price, terms, and conditions that are acceptable to the staff of the Housing Authority, in terms of financial feasibility with the affordable housing programs from the State of California and other long-term investments made by the Housing Authority. The most impactful term is the contingency of the sale on receipt of these State program funds to allow the project to move forward. If the funds are not awarded, the Housing Authority can choose not to proceed with the purchase.

Please see the attached draft Purchase and Sale Agreement.

**FISCAL IMPACT**

Feasibility studies totaling no more than \$70,000 have or will be performed to assure that the project is feasible. In addition, a \$25,000 refundable deposit will be required to open escrow. If the project receives its additional State funding, a additional deposit of \$200,000 will be required in spring of 2023. The purchase will be made with a combination of state, private, and Housing Authority funds as contemplated in the financials presented to the Board in closed session.



**CEQA**

Not applicable.

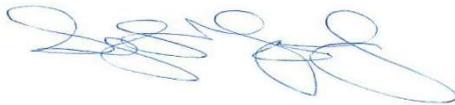
**RECOMMENDATION**

Authorize the Executive Director to negotiate and execute a Purchase and Sale Agreement for 1628 Webster Street.

**ATTACHMENTS**

1. Att 1 Draft Webster\_Agreement of Sale and Purchase\_v2

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Sylvia Martinez', is written over a faint, illegible background.

Sylvia Martinez, Director of Housing Development

## ATTACHMENT 1: DRAFT PSA

## AGREEMENT OF SALE AND PURCHASE

(1628 WEBSTER STREET)

**THIS AGREEMENT OF SALE AND PURCHASE** (this “**Agreement**”), dated effective for all purposes as of [June \_\_\_\_, 2022] (the “**Effective Date**”), is between ALAMEDA HOSPITALITY LLC, a [California limited liability company] (“**Seller**”), and HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a California body corporate and politic (together with its permitted successors and assigns, “**Buyer**”).

## ARTICLE I

## CERTAIN DEFINITIONS

**Section 1.1 Definitions.** The parties hereby agree that the following terms shall have the meanings hereinafter set forth, such definitions to be applicable equally to the singular and plural forms, and to the masculine and feminine forms, of such terms:

“**Affiliate**” shall mean any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Buyer or Seller, as the case may be. For the purposes of this definition, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the day-to-day management of a person, whether through the ownership of voting securities, by contract, by serving in the capacity of general partner or managing member or otherwise, and the terms “controlling” and “controlled” have the meanings correlative to the foregoing.

“**Agreement**” shall mean this Agreement of Sale and Purchase, as the same may be amended, modified, or supplemented from time to time in writing by the parties hereto.

“**Ancillary Agreements**” shall mean each of the documents, instruments or agreements executed and delivered pursuant to the terms of this Agreement.

“**Approval Notice**” shall have the meaning ascribed in Section 3.5.

“**Assignment and Assumption of Contracts**” shall have the meaning ascribed in Section 9.3(a)(iii).

“**Assumed Contracts**” means collectively (i) those Contracts designated by Buyer during the Due Diligence Period to be assumed by Buyer, and (ii) those contracts entered into by Seller after the Effective Date and prior to the Closing Date in accordance with Section 8.3.

“**Bill of Sale**” shall have the meaning ascribed in Section 9.3(a)(ii).

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in Alameda, California are not open for business.

“**Buyer Diligence Materials**” shall mean copies of all reports, assessments, and studies regarding the Property prepared in connection with Buyer’s Due Diligence.

“**City**” shall mean the City of Alameda.

“**Closing**” shall have the meaning ascribed in Section 9.2.

“**Closing Date**” shall mean, the date on which the Closing shall occur, but in no event later than the date set forth in Section 9.2.

“**Closing Statement**” shall have the meaning ascribed in Section 9.5(a).

“**Consenting Parties/Party**” shall have the meanings ascribed in Section 3.6.

“**Contracts**” shall mean (i) the service contracts and other agreements made available to Buyer as part of the Due Diligence Items, and (ii) all other service contracts entered into by Seller after the Effective Date with respect to the Property in accordance with Section 8.3.

“**Deposit**” shall have the meaning ascribed in Section 2.3.

“**Document Delivery Date**” shall mean the earlier of (a) five (5) days following the Effective Date or (b) the date on which Seller has made available to Buyer the Due Diligence Items.

“**Due Diligence**” shall mean the review contemplated by Section 3.1 and related provisions of this Agreement.

“**Due Diligence Items**” shall mean those items, documents and deliveries contemplated in Section 3.2(a).

“**Due Diligence Period**” shall mean the time period contemplated by Section 3.1 of this Agreement.

“**Environmental Laws**” means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any Governmental Entity and in effect as of the date of this Agreement with respect to or which otherwise pertain to or affect the Real Property or the Improvements, or any portion thereof, the use, ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, or Buyer, and as the same have been amended, modified or supplemented from time to time prior to the date of this Agreement, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of

1986 (42 U.S.C. § 9601 et seq.), comparable state and local laws, and any and all rules and regulations which have become effective prior to the date of this Agreement under any and all of the aforementioned laws.

**“Escrow Agent”** shall mean [TBD by Buyer], in its capacity as escrow agent hereunder.

**“Excluded Information”** shall mean any documents, materials or information (A) which are subject to attorney/client, work product or similar privilege, (B) which is confidential or proprietary to Seller, and (C) which are appraisals, valuations, Seller’s internal work product or internal correspondence.

**“Express Seller Representations”** shall have the meaning ascribed in Section 7.2(g).

**“Fixtures”** shall mean the fixtures which are located at and affixed to any of the Improvements as of the Closing Date so as to become real property, but specifically excluding fixtures owned by the Tenants under the applicable Leases, if any.

**“Governmental Entity”** means the various governmental and quasi- governmental bodies or agencies having jurisdiction over Seller, the Property or any portion thereof.

**“Grant Deed”** shall have the meaning ascribed in Section 9.3(a)(i).

**“Hazardous Materials”** means any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, mold, chlorinated solvents, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls (“**PCBs**”), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any Environmental Laws (excluding the following which are used in the ordinary operation and maintenance of the Property: (i) ordinary and customary cleaning supplies and other materials in reasonable quantities, to the extent in closed containers, and (ii) petroleum, gasoline and other fuel and lubricants in reasonable quantities and used in the operation of equipment, machinery and vehicles).

**“Improvements”** shall mean and include certain buildings and other improvements which comprise an extended stay hotel and related retail facilities located at 1628 Webster Street, Alameda, CA 94501.

**“Independent Consideration”** shall have the meaning ascribed in Section 2.4.

**“Land”** shall mean the land described on **Exhibit A**, including but not limited to all of the appurtenant easements, licenses, navigation and water use rights, permits, development rights, easements, regulatory approvals, riparian rights, rights under restrictive covenants and any other rights and interests appurtenant thereto.

**“Leases”** shall mean all unexpired leases, subleases, occupancy agreements, and any other agreements (together with any amendments, supplements and modifications thereto) for the use, possession, or occupancy of any portions of the Real Property as of the Closing Date, which leases include residential leases and any tenant deposits, delivered in connection with the foregoing.

“**Licensee Parties**” shall mean Buyer and its lenders and investors and the authorized agents, contractors, consultants, accountants, advisors, attorneys and representatives of Buyer and its lenders and investors who shall inspect, investigate, test or evaluate the Property on behalf of Buyer in accordance with this Agreement.

“**Licenses and Permits**” shall mean, collectively, to the extent assignable, all licenses, permits, approvals, development agreements, disposition and development agreements, certificates of occupancy, dedications, subdivision maps and entitlements now or hereafter issued, approved or granted by any Governmental Entity in connection with the Property, together with all renewals and modifications thereof.

“**Mandatory Cure Items**” shall mean, collectively, (A) any delinquent ad valorem real property taxes and real property assessments, and (B) any monetary liens created by Seller.

“**New Leases**” or “**New Lease**” shall mean, collectively, or singularly, any Lease entered into between the Effective Date and the Closing Date in accordance with Section 8.1.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**OFAC List**” is any list of prohibited countries, individuals, organizations and entities that is administered or maintained by OFAC, including: (i) Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), any related enabling legislation or any other similar executive orders, (ii) the List of Specially Designated Nationals and Blocked Persons maintained by OFAC, and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation, or (iii) a “Designated National” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

“**Permitted Exceptions**” shall mean and include all of the following: (a) all matters listed in the Title Commitment and Survey (other than (i) the Mandatory Cure Items, and (ii) those matters to which Buyer timely objects in accordance with the terms of this Agreement, provided they do not thereafter constitute Permitted Exceptions under Section 4.2 hereof), (b) the lien of taxes and assessments not yet due and payable (provided that the tax liens and special assessment liens shall be prorated as of the Closing Date and Seller shall be responsible for the portion attributable to the period prior to the Closing Date), (c) any exceptions caused by, through or at the direction of Buyer, its Affiliates, agents, representatives or employees, and (d) the rights of those Tenants under the Leases described in the Rent Schedule approved by Buyer prior to the expiration of the Due Diligence Period and any New Leases.

“**Person**” means any individual, partnership, corporation, limited liability company, limited liability partnership, Governmental Entity, trust or other entity.

“**Personal Property**” shall mean all of the right, title, and interest of Seller in and to the tangible personal property, which is located at and used primarily in connection with any of the Property, to the extent transferable without the requirement of consent of any third party.

“**Pre-Effective Date Leases**” or “**Pre-Effective Date Lease**” shall mean, collectively, or singularly, any Lease in effect as of the Effective Date.

“**Property**” shall mean the Land, the Improvements, together with the Personal Property and all of Seller’s right, title, and interest in and to the Leases and the Assumed Contracts.

“**Purchase Price**” shall have the meaning ascribed in Section 2.2.

“**Real Property**” shall mean the Land, the Improvements, and the Fixtures.

“**Rent Schedule**” shall have the meaning given to such term on **Exhibit B**.

“**Rents**” shall mean and include fixed monthly rentals, additional rentals, utility charges storage rentals, locker rentals, and other sums and charges payable by Tenants under the Leases or from other occupants or users of the Property.

“**Seller Related Party**” shall mean, collectively, Seller and its Affiliates, officers, directors, shareholders, beneficiaries, members, partners, agents and employees, and each of their respective heirs, successors, personal representatives and assigns, as applicable.

“**Tax Affidavits**” shall have the meaning ascribed in Section 9.3(a)(vii).

“**Tenant**” or “**Tenants**” shall mean, individually, or collectively, any Person occupying or entitled to possession of any portion of the Real Property pursuant to the Leases.

“**Tenant Deposits**” means all Rents paid more than one month in advance, and security deposits (whether cash or non-cash) paid or deposited by the Tenants pursuant to the Leases (together with any accrued interest).

“**Tenant Notice Letter**” shall have the meaning ascribed in Section 9.3(a)(viii).

“**Title Commitment**” shall have the meaning ascribed in Section 4.1.

“**Title Company**” shall mean [TBD by Buyer], in its capacity as issuer of the Title Policy.

“**Title Matters**” shall have the meaning ascribed in Section 4.2.

“**Title Objections**” shall have the meaning ascribed in Section 4.2.

“**Title Policy**” shall have the meaning ascribed in Section 4.3.

**Section 1.2 Rules of Construction.** Article and section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. All references to “Article” or “Sections” without reference to a document other than this Agreement, are intended to designate articles and sections of this Agreement, and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to any particular article or section, unless specifically designated otherwise. The use of the term “including” shall mean in all cases “including but not limited to,” unless specifically designated otherwise. No rules of construction against the drafter of this Agreement shall apply in any

interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

## ARTICLE II

### AGREEMENT OF SALE AND PURCHASE; PURCHASE PRICE

**Section 2.1 Agreement of Sale and Purchase.** Subject to the terms and conditions contained herein, Seller agrees to sell, transfer, assign and convey to Buyer, and Buyer agrees to purchase, accept and assume the Property.

**Section 2.2 Purchase Price.** Subject to the terms and conditions contained herein, upon Closing, the purchase price for the Property shall be No/100 Dollars (\$ (the “**Purchase Price**”) payable by Federal Reserve wire transfer of immediately available funds. The Purchase Price and such other funds as may be necessary to pay Buyer’s expenses hereunder, subject to closing adjustments, shall be deposited with the Escrow Agent on or before the Closing Date in accordance with this Agreement and paid to Seller at Closing.

**Section 2.3 Deposit.** Within three (3) Business Days of the Effective Date, Buyer shall deposit by Federal Reserve wire transfer of immediately available funds the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) as an initial deposit (the “**Initial Deposit**”) with Escrow Agent whose address is as indicated in Section 11.3. Additionally, if Buyer has not terminated this Agreement and has delivered the Approval Notice in accordance with the terms of this Agreement, the Buyer shall deposit by Federal Reserve wire transfer of immediately available funds the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) on or before March 1, 2023 (the “**Second Deposit**” and collectively with the Initial Deposit and the Extension Deposit (if made), the “**Deposit**”) with Escrow Agent. The Initial Deposit shall be nonrefundable to Buyer upon Buyer’s delivery of the Approval Notice. The Deposit shall be held and delivered by Escrow Agent in accordance with the provisions of Article 5. Interest earned on the Deposit while held by the Escrow Agent shall be considered part of the Deposit and shall be deemed to have been earned by and constitute income of Buyer. If the Closing occurs, the Deposit, including all interest, shall be applied against the Purchase Price on the Closing Date.

**Section 2.4 Independent Consideration.** Contemporaneously with the execution and delivery of this Agreement, Buyer has paid to Seller as further consideration for this Agreement, in cash, the sum of One Hundred and No/100 Dollars (\$100.00) (the “**Independent Consideration**”), in addition to the Deposit and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is nonrefundable under any circumstances.

## ARTICLE III

### BUYER’S DUE DILIGENCE/CONDITION OF THE PROPERTY/CONSENTS

**Section 3.1 Buyer’s Inspections and Due Diligence.** The due diligence period will expire at 5:00 p.m. Pacific Time on the date that is one hundred eighty (180) days following the Effective Date (the period expiring on such date, the “**Due Diligence Period**”); provided, however,

Buyer shall have the option to extend the Due Diligence Period four (4) times, in increments of thirty (30) days each, up to a total of one hundred twenty (120) days, if (i) Buyer delivers an extension notice three (3) days prior to the scheduled expiration of the Due Diligence Period and (ii) deposits into Escrow an extension deposit in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) for each such extension (each, an “**Extension Deposit**”), which Extension Deposit shall be credited toward the Purchase Price except as otherwise provided in this Agreement. From and after the Effective Date, Buyer and the Licensee Parties may conduct examinations, inspections, testing, studies and investigations (collectively, the “**Due Diligence**”) of the Property, information regarding the Property and such documents applicable to the Property. Except for any limitations as may be imposed by this Article III, Buyer may conduct such due diligence activities, inspections, and studies of the Property as it deems necessary or appropriate, and examine and investigate to its full satisfaction all facts, circumstances, and matters relating to the Property (including the physical condition and use, availability and adequacy of utilities, access, zoning, compliance with applicable laws, environmental conditions, engineering and structural matters), title and survey matters, and any other matters it deems necessary or appropriate for purposes of consummating this transaction. The examinations, inspections, testing, studies and investigations conducted by Buyer shall be at Buyer’s sole cost and expense.

### **Section 3.2 Delivery Period.**

(a) No later than three (3) days following the Effective Date, Seller shall deliver to Buyer or make available to Buyer for inspection at the Property, or on an electronic due diligence data site, (i) those items listed on **Exhibit B** hereto, and (ii) copies of any other documents and information related to the Property which Buyer or the Licensee Parties may reasonably request (the “**Due Diligence Items**”). Seller shall also instruct Escrow Agent to cause to be prepared and delivered to Buyer all natural hazard disclosures regarding the Property required by law within the time periods so required, and all natural hazard disclosure reports delivered to Buyer shall be deemed to be included within the Due Diligence Items.

(b) All documents, materials, and information are furnished to or made available to Buyer pursuant to this Section 3.2 for information purposes only and without any representation or warranty by Seller with respect thereto, express or implied, except as may otherwise be expressly set forth in Section 6.1 below and as limited by Section 6.2 below. All documents, materials, and information furnished to or made available to Buyer pursuant to this Section 3.2 are expressly understood by Buyer to be subject to the confidentiality provisions of Section 11.11 below.

**Section 3.3 Site Visits.** Buyer and its Licensee Parties shall have reasonable access to the Property at agreed upon times between 9:00 a.m. and 5:00 p.m. Pacific Time on any Business Day, on not less than twenty-four (24) hours’ prior notice to Seller, which notice may be provided telephonically or via electronic mail. Seller shall in all events have the right to have a representative present during any visits to or inspections of the Property by Buyer or any Licensee Parties. Buyer will conduct its Due Diligence in a manner which (a) is not unreasonably disruptive to Tenants or the normal operation of the Property, and (b) is in compliance with the Leases. Buyer shall not contact any Tenants. In the event Buyer desires to conduct any physically intrusive Due Diligence prior to the Closing, such as sampling of soils, other media, building materials, or the like, Buyer will identify in writing what procedures Buyer desires to perform and request Seller’s

express written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Upon receipt of Seller's written consent, Buyer and all Licensee Parties shall, in performing such Due Diligence, comply with the agreed upon procedures and with any and all laws, ordinances, rules, and regulations applicable to the Property and will not engage in any activities which would violate any permit, license, or Environmental Law. As a condition precedent to gaining access to the Property as set forth in this Section 3.3, Buyer or Buyer's Licensee Parties will maintain comprehensive general liability (occurrence) insurance covering any and all liability of Buyer and its agents, employees or representatives with respect to and arising out of Buyer's inspection of the Property in full force and effect, in an amount no less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence, such policy(s) to be provided from an insurer reasonably acceptable to Seller, naming each Seller Related Party as an additional insured party. Buyer shall (x) provide evidence to Seller so that Seller may verify such coverage prior to entry upon the Land or Improvements; (y) promptly pay when due the costs of all entry and inspections and examinations done with regard to the Property; and (z) restore the Land and Improvements substantially to the condition in which the same were found before any such entry upon the Property and inspection or examination was undertaken; provided Buyer shall have no obligation to remediate any pre-existing physical or environmental conditions.

**Section 3.4 Buyer's Due Diligence Indemnity.** Buyer shall defend, indemnify, and hold harmless each Seller Related Party from and against all losses, costs, damages, claims, and liabilities (whether arising out of injury or death to persons or damage to the Property or otherwise) including, but not limited to, costs of remediation, restoration and other similar activities, mechanic's and materialmen's liens and attorneys' fees, arising out of or in connection with Buyer's breach of its obligations under Section 3.3 or Buyer's or any Licensee Parties' entry upon the Property prior to the Closing; provided, however, that Buyer shall not have (a) any obligations under this Section 3.4 with respect to the mere discovery of adverse conditions relating to the Property or preexisting conditions of the Property discovered by Buyer or any Licensee Party in the course of any investigations permitted by this, or (b) any liability to a Seller Related Party under this Section 3.4 for damage or injury that is caused by the gross negligence or willful misconduct of such Seller Related Party.

**Section 3.5 Due Diligence Period.** Buyer may, as determined in its sole and absolute discretion for any reason or no reason whatsoever, terminate its obligations hereunder without further liability except for those obligations that survive termination as provided in Sections 9.6, and 11.11 by giving Seller and Escrow Agent written notice on or before the end of the Due Diligence Period. If Buyer determines to proceed with the purchase of the Property, then Buyer shall, before the end of the Due Diligence Period, notify Seller and Escrow Agent in writing that Buyer has approved all of the matters described in Sections 3.1 and 3.2 (the "**Approval Notice**"). If before the end of the Due Diligence Period, Buyer fails to give Seller such written notice of its approval of the matters described in Sections 3.1 and 3.2, then Buyer shall be deemed to have terminated this Agreement without further liability except for those obligations that survive termination as provided in Sections 9.6, and 11.11. If Buyer terminates (or is deemed to have terminated) this Agreement under this Section 3.5, the Deposit shall be immediately returned to Buyer, and Buyer shall promptly return the Due Diligence Items to Seller or destroy the same. If Buyer approves the matters described in Sections 3.1 and 3.2 prior to the end of the Due Diligence Period, Buyer and the Licensee Parties may, after the expiration of the Due Diligence Period

conduct such examinations, inspections, testing, studies or investigations regarding the Property (and Seller shall cooperate with Buyer and the Licensee Parties by promptly providing such information reasonably requested by any of them and access to the Property); provided, however, that the same shall (a) be subject to the terms and conditions of this Article III and (b) in no event give rise to any right in favor of Buyer to terminate the Agreement.

## ARTICLE IV

### TITLE AND SURVEY

**Section 4.1 Title to Real Property.** Seller shall order from the Title Company, for receipt no later than three (3) Business Days following the Effective Date, (a) a preliminary title report with respect to the Real Property issued by the Title Company (the “**Title Commitment**”), and (b) complete and legible copies of all recorded documents referred to on Schedule B of the Title Commitment as exceptions to coverage.

**Section 4.2 Certain Exceptions to Title.** With respect to any title matters (herein collectively called “**Title Matters**”) that are shown as exceptions in the Title Commitment or reflected in the Survey, Buyer shall have the right, in its sole and absolute discretion, to object in writing to such Title Matters at any time on or prior to the expiration of the Due Diligence Period. With respect to any new Title Matters (i.e., Title Matters not shown in the Title Commitment) shown in any updated title report or survey delivered after the expiration of the Due Diligence Period, Buyer shall have the right to object in writing to such new Title Matters at any time on or prior to the earlier of (i) five (5) Business Days after receipt by Buyer of an updated title report or survey, in writing, disclosing such new Title Matters, or (ii) two (2) Business Days prior to the Closing Date; provided, however, that Buyer shall have not less than two (2) Business Days from the date of receipt of such updated title report or survey, in writing, disclosing such Title Matters to object to such notice, and if necessary, the Closing Date shall be postponed to afford the Buyer such time to object. If Buyer fails to object in a timely manner to the new Title Matters within such time period, such new Title Matters shall be deemed Permitted Exceptions. Any Title Matters which are objected to by Buyer in a timely manner, shall be herein collectively called the “**Title Objections**.” Seller may elect (but shall not be obligated) to remove or cause to be removed, at its expense, such Title Objection, and shall be entitled to a reasonable adjournment of the Closing (not to exceed fifteen (15) days) for the purpose of such removal, which removal will be deemed effected when such Title Matter no longer encumbers the Real Property of record; provided, however, that any such Title Matters shall be considered removed following written notice thereof to Buyer and on the date the Title Company irrevocably commits to issue the Title Policy without reference to the Title Matter that is the subject of such Title Objection. Seller shall notify Buyer in writing no later than three (3) days following receipt of Buyer’s notice of any Title Objections whether Seller elects to remove the Title Objections set forth in each such notice (and if necessary, the Closing Date shall be postponed to allow Seller such time to so notify Buyer). Except as provided below with respect to Mandatory Cure Items, if Seller is unable to remove any Title Objections prior to the Closing, or if Seller elects not to remove one or more Title Objections, Buyer may elect by written notice to Seller and Escrow Agent no later than two (2) days after the date on which Buyer is notified in writing that Seller is unable or unwilling to so remove such Title Objections (and if necessary, the Closing Date shall be postponed to afford Buyer such time to elect either of the following remedies), as its sole and exclusive remedy therefor, to either (a)

terminate this Agreement by giving written notice to Seller and Escrow Agent, in which event the Deposit shall be returned to Buyer and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement as set forth in Sections 9.6 and 11.11, or (b) waive such Title Objections, in which event the Title Matters that are the subject of such Title Objections shall be deemed additional Permitted Exceptions and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price. If Buyer fails to give Seller and Escrow Agent such written notice as and when required hereunder, then Buyer shall be deemed to have elected to waive such Title Objections pursuant to subsection (b) of the preceding sentence and its right to terminate this Agreement with respect to such Title Objection pursuant to subsection (a) of the preceding sentence. Notwithstanding the foregoing, (i) in the event Seller agrees but subsequently fails to remove one or more Title Objections prior to the Closing, Buyer may elect by written notice to Seller and Escrow Agent no later than five (5) days after the date on which Buyer is notified in writing that Seller is no longer able or willing to so remove such Title Objections (and if necessary, the Closing Date shall be postponed to afford Buyer such time to elect either of the following remedies), as its sole and exclusive remedy therefor, to either (a) terminate this Agreement by giving written notice to Seller and Escrow Agent, in which event the Deposit shall be returned to Buyer, Buyer shall be entitled to a reimbursement by Seller of out of pocket expenses in an amount not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00), and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement as set forth in Sections 9.6 and 11.11, or (b) waive such Title Objections, in which event the Title Matters that are the subject of such Title Objections shall be deemed additional Permitted Exceptions and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price; and (ii) Seller shall be obligated at or prior to Closing to cause the Mandatory Cure Items to be paid, satisfied and released (as applicable).

**Section 4.3 Title Insurance.** At Closing, the Title Company shall issue to Buyer or be irrevocably committed to issue to Buyer (subject only to the payment of the premium therefor), at the expense of Seller, an ALTA owner's standard coverage policy, in the amount of the Purchase Price, insuring that title to the Real Property is vested in Buyer subject only to the Permitted Exceptions. Prior to Closing, Buyer may, at its option and additional expense, require that Buyer's Title Policy be a 2006 ALTA extended coverage policy together with such endorsements as Buyer may reasonably require (the "**Title Policy**").

## ARTICLE V

### REMEDIES AND DEPOSIT INSTRUCTIONS

**Section 5.1 Seller Default.** If Seller defaults under the terms of this Agreement prior to the Closing, Buyer shall be entitled, as its sole and exclusive remedies, either (a) to terminate this Agreement, receive the return of the Deposit and a reimbursement of Buyer's out of pocket expenses in an amount not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00), or (b) to enforce specific performance of this Agreement. Buyer expressly waives its rights to seek any damages (including without limitation, compensatory, punitive, consequential or special damages) in the event of Seller's default hereunder. Buyer shall be deemed to have elected to terminate this Agreement and receive a refund of the Deposit and reimbursement of out of pocket



(c) The Escrow Agent shall be reimbursed on an equal basis by Buyer and Seller for any reasonable expenses incurred by the Escrow Agent arising from a dispute with respect to the amount held in escrow, including the cost of any legal expenses and court costs incurred by the Escrow Agent, should the Escrow Agent deem it necessary to retain an attorney with respect to the disposition of the amount held in escrow.

(d) In the event of a dispute between the parties hereto with respect to the disposition of the amount held in escrow, the Escrow Agent shall be entitled, at its own discretion, to deliver such amount to an appropriate court of law pending resolution of the dispute.

(e) The Escrow Agent shall invest the amount in escrow in accounts which are federally insured or which invest solely in government securities and shall be applied in accordance with the terms of this Agreement. Interest earned thereon shall be added to the funds deposited by Buyer.

(f) For purposes of clarification, the Escrow Agent shall be differentiated from the Title Company. The provisions of this Section 5.3 shall not limit the Title Company's obligations under the Title Policy (including, without limitation, the assurances given by the Title Company that the Ancillary Agreements conveying title to Buyer were duly authorized, executed and delivered).

**Section 5.4 Designation of Reporting Person.** In order to assure compliance with the requirements of Section 6045 of the Internal Revenue Code of 1986, as amended (for purposes of this Section 5.4, the "**Code**"), and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) Provided the Escrow Agent shall execute a statement in writing (in form and substance reasonably acceptable to the parties hereunder) pursuant to which it agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code, Seller and Buyer shall designate the Escrow Agent as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "**Reporting Person**"). If the Escrow Agent refuses to execute a statement pursuant to which it agrees to be the Reporting Person, Seller and Buyer shall agree to appoint another third party as the Reporting Person.

(b) Seller and Buyer hereby agree:

(i) to provide to the Reporting Person all information and certifications regarding such party, as reasonably requested by the Reporting Person or otherwise required to be provided by a party to the transaction described herein under Section 6045 of the Code; and

(ii) to provide to the Reporting Person such party's taxpayer identification number and a statement (on Internal Revenue Service Form W-9 or an acceptable substitute form, or on any other form the applicable current or future Code sections and regulations might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Reporting Person is correct.

Each party hereto agrees to retain this Agreement for not less than four years from the end of the calendar year in which the Closing occurred, and to produce it to the Internal Revenue Service upon a valid request therefor. The provisions of this Section 5.4 shall survive the Closing.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF SELLER

**Section 6.1 Representations and Warranties of Seller.** Subject to the provisions of Section 6.2, Seller makes the following representations and as of the Effective Date and as of the date on which the Closing occurs:

(a) **Authority.** The execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been or will be duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller, subject to equitable principles and principles governing creditors' rights generally.

(b) **Bankruptcy.** Seller has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceedings, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

(c) **Compliance.** Seller has not received any written notice of any uncured material violation of the laws, rules or ordinances applicable to the Property. Except as set forth in the Due Diligence Items, to Seller's knowledge, Seller has not received any written notification from any governmental or public authority that the Property is in violation of any applicable fire, health, building, use, occupancy or zoning laws where such violation remains outstanding. Seller has not received any violation of any private declaration, covenant or restriction affecting the Property.

(d) **Condemnation.** Seller has not received any written condemnation notice from a Governmental Entity with respect to all or part of the Property and, to Seller's knowledge, no such action or similar proceeding is threatened in writing.

(e) **Consents.** No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of the transactions contemplated hereby.

(f) **Employees.** Seller has not received any written notification from, or on behalf of, any employee that the Seller is in violation of any applicable employment laws where such violation remains outstanding, and no such claims exist or are pending against Seller.

(g) **Leases; Rent Schedule.** The Rent Schedule (as defined in **Exhibit B**) contains a list of all executed Leases relating to the Property as of the Effective Date and all

amendments and modifications to such Leases. All Tenant Deposits are accurately identified in the Rent Schedule and are held by Seller in cash, and no Tenant or any other party has any claim (other than for customary refund at the expiration of a Lease) to all or any part of any Tenant Deposit resulting from actions which occur prior to the Closing Date. All material obligations of the lessor under the Leases required to be performed by the lessor on or before the date hereof have been performed and, no material event of default on the part of the lessor exists under any Lease. There are no oral promises, understandings, agreements, or commitments between Seller and any tenant or other party for the use, occupancy, or possession of the Property;

(h) **Non-Contravention.** The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity by which Seller is bound or (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture or, any other material agreement or instrument to which Seller is a party or by which Seller may be bound.

(i) **Non-Foreign Entity.** Seller is not a “foreign person” or “foreign corporation” as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(j) **OFAC.** Neither: (i) Seller, any Affiliate of Seller nor any Person controlled by Seller; nor (ii), to Seller’s knowledge, any Person who owns a controlling interest in or otherwise controls Seller; nor (iii) to Seller’s knowledge, any Person otherwise having a direct or indirect beneficial interest (other than with respect to an interest in a publicly traded entity) in Seller; nor (iv) any Person for whom Seller is acting as agent or nominee in connection with this investment, is a country, territory, Person, organization, or entity named on an OFAC List, nor is a prohibited country, territory, Person, organization, or entity under any economic sanctions program administered or maintained by OFAC.

(k) **Status.** Seller is a limited liability company duly organized or formed, validly existing and in good standing under the laws of the State of [California].

(l) **Litigation.** There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of Seller, threatened by or before any court or governmental authority (a) against or affecting the Property or Seller or arising out of the development, construction, financing, operation, maintenance or management of the Property or (b) that would prevent or hinder the performance by Seller of its obligations under this Agreement or the completion of the Transaction as contemplated by this Agreement;

(m) **Options.** Seller has not granted any option or right of first refusal to any party to acquire any interest in the Property that remains outstanding.

(n) **No Liens.** There will be no outstanding written or oral contracts made by Seller to construct any improvements to the Property.

(o) **No Defaults.** Seller has not received any written notice of any material default by Seller under any of the Assumed Contracts that will not be terminated on the Closing Date.

(p) **No Hazardous Materials.** To the best of Seller's actual knowledge: (a) there are no underground storage tanks on the Property; (b) no underground storage tanks have been placed on or removed from the Property during Seller's ownership of the Property; (c) the Property is free of asbestos and asbestos-containing materials; (d) Seller has not caused or permitted to be stored, disposed of, transferred, produced, or processed on the Property any Hazardous Substances, except in compliance with all applicable federal, state, and local laws or regulations; (e) no release of any Hazardous Substances on or off-site of the Property which might affect the Property or for which Buyer may be liable has occurred prior to the Closing Date hereof; (f) Seller is not aware of any enforcement, cleanup, removal or other governmental or regulatory actions being instituted, contemplated or threatened against it or the Property, or any neighboring property; (g) no claims have been made by any third party or other person with respect the Property relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from Hazardous Substances; and (h) there are no substances or conditions on the Property which would support a claim or cause of action under any Environmental Law. For purposes of this Agreement, the term Hazardous Substances shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("**RCRA**") as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials; chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal (excluding the following which are used in the ordinary operation and maintenance of the Property: (i) ordinary and customary cleaning supplies and other materials in reasonable quantities, to the extent in closed containers, and (ii) petroleum, gasoline and other fuel and lubricants in reasonable quantities and used in the operation of equipment, machinery and vehicles).

(q) **Due Diligence Items.** Seller has no actual knowledge of any material inaccuracy or incompleteness with respect to all leases, lease correspondence, rent rolls, reports, surveys, studies, and books and records made available to Buyer as part of the Due Diligence Items pursuant to this Agreement, and Seller represents that all such materials have been assembled in the form maintained by Seller or its property manager in the ordinary course of its business.

(r) **10 Year Hold.** There has been at least ten (10) years between the date of this Agreement and the last time the building(s) in the Project was placed in service or the date of the most recent substantial rehabilitation within Section 42(d)(2) of the Internal Revenue Code of 1986, as amended. There will not be any change to the ownership of the Project prior to the Closing.

**Section 6.2 Limited Liability.** The representations and warranties of Seller set forth in this Agreement, together with Seller's liability for any breach of any of Seller's covenants under this Agreement that survive Closing, will survive the Closing for a period of twelve (12) months

(the “**Survival Period**”). Following the Closing, to preserve its claim under this Agreement with respect to a specific alleged breach of a representation and warranty (each, an “**Alleged Breach**”), Buyer shall give written notice to Seller of such Alleged Breach prior to the expiration of the Survival Period. Seller shall have no liability after the Closing with respect to any of Seller’s representations, warranties and covenants herein if, prior to the Closing, Buyer had actual knowledge of such breach of representation, warranty or covenant of Seller herein (from whatever source, including, without limitation, any knowledge obtained as a result of Buyer’s Due Diligence or written disclosure by Seller or Seller’s agents and employees), and Buyer nevertheless consummates the transaction contemplated by this Agreement without exercising its rights and remedies against Seller prior to Closing.

**Section 6.3 Seller’s Knowledge.** For purposes of this Agreement and any document delivered at Closing, whenever the phrase “to Seller’s knowledge,” or the “knowledge” of Seller or words of similar import are used, they shall be deemed to refer to facts within the actual knowledge of [Seller to provide] and the property manager for the Property (the “**Knowledgeable Person**”), without duty of investigation or inquiry whatsoever. Buyer acknowledges that the individuals named in this Section 6.3 are named solely for the purpose of defining and narrowing the scope of Seller’s knowledge and not for the purpose of imposing any liability on or creating any duties running from such individuals to Buyer.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF BUYER

**Section 7.1 Buyer’s Representations and Warranties.** Buyer represents and warrants to Seller the following as of the Effective Date and as of the date on which the Closing occurs:

(a) **Authority.** The execution and delivery of this Agreement and the performance of Buyer’s obligations hereunder have been or will be duly authorized by all necessary action on the part of Buyer and this Agreement constitutes the legal, valid and binding obligation of Buyer, subject to equitable principles and principles governing creditors’ rights generally.

(b) **Bankruptcy.** Buyer has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

(c) **Buyer’s Participation in Governmental Programs.** Buyer has not been denied participation in any governmental grant or program.

(d) **Consents.** No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and

delivery of this Agreement by Buyer or the performance by Buyer of the transactions contemplated hereby.

(e) **Non-Contravention.** The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity by which Buyer is bound or (ii) to Buyer's knowledge conflict with, result in a breach of, or constitute a default under the organizational documents of Buyer, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any other material agreement or instrument to which Buyer is a party or by which it is bound.

(f) **OFAC.** Neither: (i) Buyer, any Affiliate of Buyer nor any Person controlled by Buyer; nor (ii) to the actual knowledge of Buyer, any Person who owns a controlling interest in or otherwise controls Buyer; nor (iii) to the knowledge of Buyer, if Buyer is a privately held entity, any Person otherwise having a direct or indirect beneficial interest (other than with respect to an interest in a publicly traded entity) in Buyer; nor (iv) any Person for whom Buyer is acting as agent or nominee in connection with this investment, is a country, territory, Person, organization, or entity named on an OFAC List, nor is a prohibited country, territory, Person, organization, or entity under any economic sanctions program administered or maintained by OFAC.

**Section 7.2 Buyer's Independent Investigation.** Buyer has been given, or will have before the end of the Due Diligence Period, a full opportunity to inspect and investigate each and every aspect of the Property Buyer deems necessary and proper to evaluate the transactions contemplated herein, either independently or through agents of Buyer's choosing, including, without limitation:

(a) All matters relating to title and the Property, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, and building codes;

(b) The physical condition and aspects of the Property, including, without limitation, the interior, the exterior, the square footage within the improvements on the Real Property and within each tenant space therein, the structure, the paving, the utilities, and all other physical and functional aspects of the Property, including, without limitation, an examination for the presence or absence of Hazardous Materials, which shall be performed or arranged by Buyer at Buyer's sole expense;

(c) Any easements and/or access rights affecting the Property;

(d) The Leases and all matters in connection therewith, including, without limitation, the ability of the Tenants to pay Rent;

(e) The Contracts, the Licenses and Permits, and any other material documents or agreements affecting the Property; and

(f) All other matters of material significance affecting the Property or delivered or made available to Buyer by Seller in accordance with Article 3 of this Agreement.

(g) THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN SELLER AND BUYER, THIS AGREEMENT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND BUYER, AND BUYER HAS CONDUCTED OR WILL CONDUCT ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 6.1 AND SECTION 9.6 OF THIS AGREEMENT AND IN THE ANCILLARY AGREEMENTS (THE “EXPRESS SELLER REPRESENTATIONS”), BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER’S AGENTS OR REPRESENTATIVES, AND BUYER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE OTHER THAN THE EXPRESS SELLER REPRESENTATIONS, SELLER SPECIFICALLY DISCLAIMS, AND NEITHER IT NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION OR WARRANTY WHATSOEVER TO BUYER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (D) ANY RIGHTS OF BUYER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (E) ANY CLAIM BY BUYER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, NOW OR HEREAFTER EXISTING, WITH RESPECT TO THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (F) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (G) THE COMPLIANCE OR LACK THEREOF OF THE PROPERTY OR ANY PORTION THEREOF WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER IN ITS PRESENT CONDITION AND STATE OF REPAIR, “AS IS” AND “WHERE IS”, WITH ALL FAULTS. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, BUYER IS NOT ASSUMING AND SELLER SHALL REMAIN LIABLE FOR ANY AND ALL PROBLEMS, CONDITIONS, LOSSES, COSTS, DAMAGES, CLAIMS, LIABILITIES, EXPENSES, DEMANDS OR OBLIGATIONS OF ANY KIND OR NATURE WHATSOEVER (A) ARISING OUT OF OR IN CONNECTION WITH ANY CLAIMS RESULTING FROM ANY DAMAGES THAT OCCURRED DURING THE TIME THAT SELLER OWNED FEE TITLE TO THE PROPERTY, OR (B) ACCRUED DURING THE TIME THAT SELLER OWNED FEE TITLE TO THE PROPERTY FOR WHICH SELLER REMAINS LIABLE POST-CLOSING UNDER APPLICABLE LAW.

## ARTICLE VIII

**LEASES; MAINTENANCE OF PROPERTY;  
CERTAIN OTHER COVENANTS OF SELLER**

From the date hereof until the Closing, and except as otherwise consented to or approved by Buyer, Seller covenants and agrees with Buyer as follows:

**Section 8.1 New Leases.** Prior to the Closing Date, Seller shall be permitted to enter into New Leases not exceeding Twenty-Eight (28) days for residential units in the ordinary course of business using Seller's standard lease form reviewed and approved by Buyer during the Due Diligence Period consistent with Seller's past and current practices, and modify Pre-Effective Date Leases, in the ordinary course of business, with Buyer's prior written consent. Prior to the Closing Date, Seller shall not enter into any commercial lease which is not terminable upon thirty (30) day notice without Buyer's prior written approval.

**Section 8.2 Lease Enforcement.** Prior to the Closing Date, Seller shall have the right, but not the obligation, to enforce the rights and remedies of the landlord under any Lease, by summary proceedings or otherwise (including, without limitation, the right to remove any Tenant), and to apply, in the ordinary course of business and in accordance with Seller's past and current practices and in the ordinary course of business, all or any portion of any Tenant Deposits then held by Seller toward any loss or damage incurred by Seller by reason of any defaults by Tenants, and the exercise of any such rights or remedies shall not affect the obligations of Buyer under this Agreement in any manner or entitle Buyer to a reduction in, or credit or allowance against, the Purchase Price or give rise to any other claim on the part of Buyer. Seller shall provide Buyer with written notice of any such actions.

**Section 8.3 Certain Interim Operating Covenants.** Seller covenants to Buyer that it will, (a) from the Effective Date until Closing: (A) continue to operate, manage and maintain the Improvements in the ordinary course of its business and substantially in accordance with present practice, subject to ordinary wear and tear; and (B) maintain insurance on the Property (including, without limitation, fire and extended coverage insurance) which is at least equivalent in all material respects to the insurance policies covering the Land and the Improvements as of the Effective Date; (b) from the expiration of the Due Diligence Period until Closing: (A) without Buyer's written consent, which consent shall not be unreasonably withheld, not enter into any new contract with respect to the Property or renew, extend, modify or replace any of the Contracts unless such contract will be terminated prior to the Closing at no expense to Buyer; (B) without Buyer's written consent, which consent shall not be unreasonably withheld, cancel or amend any Assumed Contract except for a cancellation in the event of a default by a service provider; and (C) not (I) sell, mortgage, pledge or otherwise transfer or dispose of all or any part of the Property or any interest therein (other than in connection with routine replacement of personal property in the ordinary course of business with personal property of substantially the same or greater value), or (II) enter into any agreement with any or market to a third party to sell all or any portion of the Property. In addition, Seller shall terminate any management agreement with the existing property manager and other Contracts which are not Assumed Contracts effective as of the Closing Date.

**Section 8.4 Property to be Delivered Vacant.** As of the Closing Date, except for the two (2) retail leases reviewed and approved by Buyer prior to the end of the Due Diligence Period,

the Property will be vacant and none of the Property, including any land or buildings, will be occupied by any person or entity, or encumbered by any lease or rental agreement.

## ARTICLE IX

### CLOSING AND CONDITIONS

**Section 9.1 Escrow Instructions.** Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Escrow Agent, and this Agreement shall serve as escrow instructions to the Escrow Agent. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

**Section 9.2 Closing.** The consummation of the purchase and sale of the Property hereunder (“**Closing**”) shall take place on any date on or between June 19, 2023 and July 1, 2023, as mutually determined by Buyer and Seller. The Closing shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made through escrow at Escrow Agent’s office. So long as the conditions precedent to the Closing as set forth herein have been satisfied or waived and Escrow Agent holds the instruments and funds accruing to Buyer and Seller as set forth herein, on the Closing Date, Escrow Agent shall be instructed (A) to record the Grant Deed with the Alameda County Recorder’s Office, (B) to pay to Seller or to those parties approved by Seller, by Federal Reserve wire transfer of immediately available funds to an account designated by Seller, the Purchase Price (subject to adjustments described in this Agreement), less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, (C) to pay all appropriate payees the other costs and amounts to be paid by Buyer and Seller at Closing pursuant to the terms of this Agreement, (D) to deliver an original Title Policy to Buyer, and (E) to deliver to Seller and Buyer, a fully-executed original of each Ancillary Agreement. Buyer shall be entitled to possession of the Property on the Closing Date, subject to the rights of the Tenants identified in the Rent Schedule in possession under written Leases.

#### **Section 9.3 Seller’s Closing Documents and Closing Conditions.**

(a) At least one (1) Business Day prior to Closing, Seller shall deposit into escrow with Escrow Agent (or otherwise deliver as expressly provided herein below) the following items:

(i) One (1) duly executed and acknowledged original Grant Deed (the “**Grant Deed**”), substantially in the form attached hereto as **Exhibit C**;

(ii) One (1) duly executed original of a Bill of Sale for the Property (the “**Bill of Sale**”), substantially in the form attached hereto as **Exhibit D**;

(iii) Two (2) duly executed counterparts of an Assignment and Assumption of Contracts, Warranties, Guaranties and Other Intangible Property (the “**Assignment and Assumption of Contracts**”) for the Property, substantially in the form attached hereto as **Exhibit E**;

(iv) [reserved];

(v) An affidavit, substantially in the form attached hereto as **Exhibit F**, pursuant to Section 1445(b)(2) of the Code, and on which Buyer is entitled to rely, that each Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code and any similar certificates required by the State of California in respect of such matters (such as the Form 593 C)(together with the document in subsection (xi) below, collectively, the “**Tax Affidavits**”);

(vi) A form notice to Tenants of the Property, substantially in the form attached hereto as **Exhibit G**, that shall disclose that the Property has been sold to Buyer, that Buyer has received any Tenant Deposit and assumed liability therefor, and that, after the Closing, all Rents should be paid to Buyer or Buyer’s designee (the “**Tenant Notice Letter**”);

(vii) All documents, property files and keys in Seller’s possession or control and relating to the Property (other than Excluded Information), it being understood that location of any of the items referred to in this subsection (vii) at the Property or with the Property Manager on the Closing Date shall be deemed to be delivery to Buyer;

(viii) An owner’s affidavit in customary form to the Title Company;

(ix) Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Seller and Buyer to consummate the purchase of the Property as contemplated by this Agreement;

(x) The duly executed Closing Statement; and

(xi) Documentation to establish to Escrow Agent’s reasonable satisfaction the due authority of Seller’s sale of the Property and Seller’s delivery of the documents required to be delivered by Seller pursuant to this Agreement.

(b) The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(i) Escrow Agent shall have received (x) the Deposit, (y) the balance of the Purchase Price (i.e., the Purchase Price less the Deposit), as adjusted pursuant to, and payable in the manner provided for in, this Agreement, and (z) Buyer shall have provided written authority to Escrow Agent to release such amount to Seller in accordance with the Closing Statement when Escrow Agent is committed to satisfy its other obligations to Buyer.

(ii) Buyer shall have delivered to Escrow Agent all of the items required of Buyer pursuant to Section 9.4, and shall have performed all its other obligations under this Agreement in all material respects.

(iii) Each of the representations and warranties set forth in Section 7.1 shall be accurate in all material respects at and as of the Closing.

(iv) [Reserved.]

**Section 9.4 Buyer's Closing Documents and Closing Conditions.**

(a) At least one (1) Business Day prior to Closing, Buyer shall deposit into escrow with Escrow Agent the following items:

(i) The balance of the Purchase Price (i.e., the Purchase Price less the Deposit), as adjusted pursuant to this Agreement, and such additional funds as are necessary to close this transaction;

(ii) Two (2) duly executed counterparts of the Assignment and Assumption of Contracts;

(iii) A copy of the duly executed counterpart of the Tenant Notice Letter;

(iv) Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Seller and Buyer to consummate the purchase of the Property as contemplated by this Agreement;

(v) Documentation to establish to Escrow Agent's reasonable satisfaction the due authority of Buyer's acquisition of the Property and Buyer's delivery of the documents required to be delivered by Buyer pursuant to this Agreement (including the organizational documents of Buyer, as they may have been amended from time to time, resolutions of Buyer and incumbency certificates of Buyer); and

(vi) The duly executed Closing Statement.

(b) The obligation of Buyer to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Buyer in its sole discretion:

(i) Seller shall have delivered to Escrow Agent all of the items required of Seller pursuant to Section 9.3, and shall have performed all Seller's other obligations under this Agreement in all material respects.

(ii) Each of the representations and warranties set forth in Section 6.1 shall be accurate in all material respects at and as of the Closing.

(iii) The Title Company shall be irrevocably committed (subject only to the payment of the premium therefor) to issue the Title Policy.

(iv) Buyer's actual receipt of the proceeds of an award of State of California affordable housing funds, as set forth in Section 10.

(c) Consequences of Failure of Condition. If any condition set forth in Section 9.3(b) or Section 9.4(b) is not satisfied or waived on or prior to the Closing Date, then the party to this Agreement whose obligations are conditioned upon the satisfaction of such condition, may (a) if such failure of condition constitutes a default under this Agreement, pursue its remedies under Section 5.1 or 5.2 of this Agreement, or (b) if such failure of condition does not constitute a default

under this Agreement, terminate this Agreement by written notice delivered at or prior to the scheduled Closing Date. In the event of termination of this Agreement pursuant to clause (b) of this paragraph: (x) the Deposit shall be promptly returned to Buyer, and (y) except with respect to the obligations and indemnities set forth in this Agreement that survive termination, neither party shall have any further liability or obligation to the other under this Agreement.

### **Section 9.5 Prorations and Closing Costs.**

(a) Seller and Buyer agree to adjust, as of 11:59 p.m. Pacific Time on the day prior to the Closing Date, the following (collectively, the “**Proration Items**”): real estate and personal property taxes and assessments (subject to the terms of Section 9.5(c) below), utility bills (except as hereinafter provided), and collected Rents and other income from the Property (subject to the terms of Section 9.5(b) below). Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and through the day prior to the Closing Date, and Buyer will be charged and credited for all of the Proration Items relating to the period from and after the Closing Date. Such preliminary estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Buyer for Buyer’s approval prior to the Closing Date (the “**Closing Statement**”). The Closing Statement, once agreed upon, shall be signed by Buyer and Seller and delivered to the Escrow Agent for purposes of making the preliminary proration adjustment at Closing subject to the final cash settlement provided for below. The preliminary proration shall be paid at Closing by Buyer to Seller (if the preliminary prorations result in a net credit to Seller) or by Seller to Buyer (if the preliminary prorations result in a net credit to Buyer) by increasing or reducing the cash to be delivered by Buyer in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Date, the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received (not to exceed one hundred eighty (180) days after Closing), re-prorations will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Buyer. No prorations will be made in relation to insurance premiums, and Seller’s insurance policies will not be assigned to Buyer. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration will be made at Closing with respect to utility bills (and Seller shall be responsible for billings prior to Closing and Buyer shall be responsible for billings on and after Closing). Seller will be entitled to all deposits presently in effect with the utility providers (and shall not receive a credit at Closing for such deposits), and Buyer will be obligated to make its own arrangements for deposits with the utility providers. The provisions of this Section 9.5 will survive the Closing for twelve (12) months.

(b) Buyer will receive a credit on the Closing Statement for the prorated amount (as of 11:59 p.m. Pacific Time on the day prior to the Closing Date) of all Rent previously paid to or collected by Seller and attributable to any period following Closing. Rents are “**Delinquent**” when they were due prior to the Closing Date, and payment thereof has not been made on or before the Closing Date. Delinquent Rents will not be prorated. All Rents collected by Seller after the Closing Date will be promptly delivered to Buyer. All Rents collected by Buyer from and after Closing from each Tenant will be applied, first to current amounts owed by such Tenant to Buyer, then to any Delinquent Rents owed by such Tenant to Seller. Any sums due Seller will be promptly remitted to Seller by Buyer. Buyer shall bill Tenants who owe Delinquent Rents for periods prior to the Closing Date on a monthly basis for three (3) consecutive months following the Closing

Date but shall have no obligation to enforce collection of any such Delinquent Rents from or against any Tenant. Seller shall have the right to sue to collect Delinquent Rents but may not seek to evict any Tenant or terminate any Lease. If Seller pursues such action, Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, losses, expenses, costs and (including, without limitation, reasonable attorneys' fees and court costs) arising out of or related to such action.

(c) All ad valorem real estate and personal property taxes and assessments with respect to the Property shall be prorated as of 11:59 p.m. Pacific Time on the day prior to the Closing Date on the basis of the most recent tax rate, assessed value and tax bill and re-prorated when actual figures are received (not to exceed one hundred eighty (180) days after Closing).

(d) Buyer shall receive a credit against Purchase Price at Closing for all Tenant Deposits held by Seller (or for the benefit of Seller), and Seller shall retain the same.

(e) Buyer shall receive a credit against the Purchase Price at Closing for all payments due or owing under any Assumed Contracts for periods prior to the Closing Date, which amounts shall be prorated as of 11:59 p.m. Pacific Time on the day prior to the Closing Date. If Seller has paid any amounts under any Assumed Contracts for periods on and after the Closing Date, Buyer shall pay such amounts to Seller at Closing in addition to the Purchase Price.

(f) Seller shall pay (A) one half of the Escrow Agent's fees, (B) the premium for the ALTA standard coverage portion of the Title Policy, (C) all recording fees in connection with any reconveyance requested hereby, (D) all of the county and one-half of any city documentary transfer taxes in connection with the transfer of the Property to Buyer pursuant to this Agreement, (C) any costs associated with any Mandatory Cure Items, and (D) any additional costs and charges customarily charged to sellers in accordance with common escrow practices in the county in which the Property is located, other than those costs and charges specifically required to be paid by Buyer hereunder. Buyer shall pay (A) one half of the Escrow Agent's fees, (B) the premium for the ALTA extended coverage policy, (C) the cost of all endorsements to the Title Policy, (D) one-half of any city documentary transfer taxes in connection with the transfer of the Property to Buyer pursuant to this Agreement, and (E) any additional costs and charges customarily charged to buyers in accordance with common escrow practices in the county in which the Property is located, other than those costs and charges specifically required to be paid by Seller hereunder. In addition to the foregoing, Buyer shall be responsible for any costs of obtaining an ALTA survey of the Property or otherwise conforming the survey to the requirements for issuance of such Title Policy or for any new survey that may be required for issuance of such Title Policy.

(g) Any initial revenues (or upfront payments, bonuses or initiation fees) received by Seller made in conjunction with entering into any laundry lease, cable agreement or telecommunication agreement that is an Assumed Contract shall be prorated as of the Closing Date based on the term of such agreement and the portion of time that has elapsed thereunder.

(h) All replacement reserves, operating reserves, principal reserve funds or any other reserves or prepayments (other than Tenant Deposits) relating to the Property shall not be prorated and shall remain with Buyer.

**Section 9.6 Brokers.** Buyer and Seller each hereby represents and warrants to the other that it did not employ or use any broker or finder to arrange or bring about this transaction except for [Seller to identify Broker] (“**Broker**”), who will be paid solely by Seller pursuant to a separate agreement. If any person brings a claim for a commission or finder’s fee based upon any contact, dealings, or communication with Buyer or its Affiliates, excluding Broker, in connection with the transactions contemplated by this Agreement, then Buyer shall defend the Seller Related Parties from such claim, and shall indemnify the Seller Related Parties and hold the Seller Related Parties harmless from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by the Seller Related Parties with respect to the claim. If any person brings a claim for a commission or finder’s fee based upon any contact, dealings, or communication with Seller or its Affiliates, including Broker, in connection with the transactions contemplated by this Agreement, then Seller shall defend Buyer from such claim, and shall indemnify Buyer and hold Buyer harmless from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by Buyer with respect to the claim. The provisions of this Section 9.6 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

## ARTICLE X

### FINANCING

**Section 10.1 State Funding Contingency.** Notwithstanding anything to the contrary contained in this Agreement, Seller and Buyer acknowledge that Buyer’s purchase of the Property as set forth in this Agreement is specifically conditioned upon Buyer’s receipt from the State of California an award of affordable housing funds in an amount not less than Twelve Million Dollars (\$12,000,000), which proceeds or other evidence of such State funding must be available to Buyer at least ten (10) Business Days prior to the Closing Date.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.1 Amendment and Modification.** Subject to applicable law, this Agreement may be amended, modified, or supplemented only by a written agreement signed by Buyer and Seller.

**Section 11.2 Loss by Fire, Other Casualty or Condemnation.** In the event that prior to the Closing Date, the Property, or any part thereof, is destroyed or damaged by fire or other casualty, which, according to Seller’s good faith estimate as reasonably agreed to by Buyer (the “**Estimate**”), would cost, with respect to the Property, more than Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the “**Threshold Amount**”) to repair, or any condemnation proceedings are commenced or overtly threatened which would involve the taking of any portion of the Property valued at more than the Threshold Amount, then Buyer shall have the right, exercisable by giving notice to Seller within fifteen (15) days after receiving written notice of such damage or destruction or taking either (a) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder and any money (including, without

limitation, the Deposit but exclusive of the Independent Consideration) or documents in Escrow shall be returned to the party depositing the same, except that Buyer and Seller shall each be responsible for one-half of any title or Escrow cancellation fee, or (b) to accept the Property in its then condition and proceed to close this transaction with an abatement or reduction in the Purchase Price in the amount of the deductible for the applicable insurance coverage, if any, and to receive an assignment of all of Seller’s rights to any insurance proceeds payable by reason of such damage or destruction or condemnation awards payable by reason of such taking. If Buyer elects to proceed under clause (b) above, Seller shall continue to maintain all insurance policies and not compromise, settle or adjust any claims to such proceeds or awards without Buyer’s prior written consent. Seller agrees to give Buyer prompt notice of any taking, damage or destruction of the Property. Buyer’s failure to deliver notice within the time period specified shall be deemed to constitute Buyer’s election to proceed under clause (b). In the event the Estimate of the cost of repair or the amount of the taking, with respect to the Property, is less than or equal to the Threshold Amount, then Buyer (w) shall not have the option to terminate this Agreement, (x) shall accept the Property in its then condition (y) shall proceed to close this transaction with an abatement or reduction in the Purchase Price in the amount of the deductible for the applicable insurance coverage, if any, and (z) shall receive an assignment of all of Seller’s rights to any insurance proceeds payable by reason of such damage or destruction or condemnation awards payable by reason of such taking, provided that Seller shall continue to maintain all insurance policies.

**Section 11.3 Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following address (including copies as follows):

If to Buyer: Alameda Affordable Housing Corporation  
701 Atlantic Avenue  
Alameda, CA 94501  
Attn: Vanessa Cooper, President  
Email: [vcooper@alamedahsg.org](mailto:vcooper@alamedahsg.org)

With copies to: Downs Pham & Kuei LLP  
235 Montgomery Street, 30<sup>th</sup> Floor  
San Francisco, CA 94104  
Attn: Tuan A. Pham  
Email: [tpham@downspham.com](mailto:tpham@downspham.com)

If to Seller: Alameda Hospitality LLC  
1628 Webster Street  
Alameda, CA 94501  
Attn: **[CONFIRM:]** Sandip Jariwala  
Email: [\_\_\_\_\_]

With Copies to: [\_\_ Seller to provide \_\_\_\_\_]  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attn: [\_\_\_\_\_  
Email: [\_\_\_\_\_]

If to Escrow Agent: [ Buyer to provide \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 Attn: [ \_\_\_\_\_ ]  
 Email: [ \_\_\_\_\_ ]

Any such notices may be sent by (a) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) Business Day after deposit with such courier, (b) facsimile transmission, or (c) electronic mail (email) transmission, in which case notice shall be deemed delivered upon electronic verification that transmission to recipient was completed. The above addresses, facsimile numbers and email addresses may be changed by written notice to the other party; provided that no notice of a change of address, facsimile number shall be effective until actual receipt of such notice.

**Section 11.4 Assignment.** Buyer and Seller shall not have the right to assign this Agreement, without the prior written consent of the other party. Notwithstanding the foregoing, Buyer may assign its interests, in whole or in part, to one or more Affiliates of Buyer (including, but not limited to, ICD Webster LLC, a California limited liability company) upon written notice to Seller, provided that no such assignment shall relieve Buyer of its obligations hereunder. This Agreement will be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns, and no other party will be conferred any rights by virtue of this Agreement or be entitled to enforce any of the provisions hereof. Whenever a reference is made in this Agreement to Seller or Buyer, such reference will include the successors and permitted assigns of such party under this Agreement.

**Section 11.5 Governing Law and Consent to Jurisdiction.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS. ANY ACTION ARISING OUT OF THIS AGREEMENT MUST BE COMMENCED BY BUYER OR SELLER IN THE SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA IN THE STATE OF CALIFORNIA OR IN THE UNITED STATES FEDERAL COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION AND EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF THE ABOVE COURTS IN ANY SUCH ACTION AND TO THE LAYING OF VENUE IN THE STATE OF CALIFORNIA. ANY PROCESS IN ANY SUCH ACTION SHALL BE DULY SERVED IF MAILED BY REGISTERED MAIL, POSTAGE PREPAID, TO THE PARTIES AT THEIR RESPECTIVE ADDRESS DESCRIBED IN SECTION 11.3 HEREOF.

**Section 11.6 Counterparts.** This Agreement may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

**Section 11.7 Entire Agreement.** This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof.

**Section 11.8 Severability.** Any term or provision of this Agreement that is invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

**Section 11.9 Attorney Fees.** If any action is brought by any party to this Agreement to enforce or interpret its terms or provisions, the prevailing party will be entitled to reasonable attorney fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom.

**Section 11.10 Payment of Fees and Expenses.** Each party to this Agreement will be responsible for, and will pay, all of its own fees and expenses, including those of its counsel and accountants, incurred in the negotiation, preparation, and consummation of this Agreement and the transaction contemplated hereunder.

**Section 11.11 Confidential Information.** The parties acknowledge that the transaction described herein is of a confidential nature and shall not be disclosed except to Licensee Parties or as required by law. No party shall make any disclosure of this Agreement or the specific terms of this Agreement, except as required by law. In connection with the negotiation of this Agreement and the preparation for the consummation of the transactions contemplated hereby, each party acknowledges that it will have access to confidential information relating to the other party. Each party shall treat such information as confidential, preserve the confidentiality thereof, and not duplicate or use such information, except to Licensee Parties in connection with the transactions contemplated hereby. In the event of the termination of this Agreement for any reason whatsoever, upon Seller's written request, Buyer shall return to Seller, all Due Diligence Items (including all copies thereof obtained from Seller in connection with the transactions contemplated hereby), or, at its election, destroy the same and confirm to Seller in writing that it has done so, and each party shall use its best efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information. Nothing in this Section 11.11 or elsewhere in this Agreement or the Ancillary Agreements, however, shall prohibit (a) the parties from making disclosures to their respective legal counsel, certified public accountants, professional advisors, current and prospective lenders and financial partners and investors such inspection reports or analyses, (b) the parties from making disclosures that are otherwise required as a matter of law, (c) the parties from making disclosures if, at the time of disclosure or thereafter, such information is or becomes available to and known by the public other than as a result of a disclosure by such party in breach of this Agreement, or (d) the parties from making disclosures in connection with asserting or defending any action relating to the Property or this Agreement. In addition, the parties to this Agreement (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transaction contemplated in

this Agreement, provided, however, that no party (and no employee, representative or other agent thereof) shall disclose any other information that is not relevant to understanding the tax treatment and tax structure of the transaction (including the identity of the other party and any information that could lead another to determine the identity of the other party). Neither party shall issue or cause to be issued a press release in connection with the transactions contemplated hereby without the approval of the other party, not to be unreasonably withheld, conditioned or delayed. The provisions of this Section 11.11 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

**Section 11.12 No Joint Venture.** Nothing set forth in this Agreement shall be construed to create a joint venture between Buyer and Seller.

**Section 11.13 Judicial Reference; Waiver of Jury Trial.** BUYER AND SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREE THAT ANY ACTION TO RESOLVE ANY DISPUTE CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (EACH, AN “**ACTION**”) (A) ARISING OUT OF THIS AGREEMENT, INCLUDING ANY PRESENT OR FUTURE AMENDMENT THEREOF OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT (AS HEREAFTER AMENDED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND REGARDLESS OF WHICH PARTY ASSERTS SUCH ACTION SHALL BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO SECTION 638, ET SEQ., OF THE CALIFORNIA CODE OF CIVIL PROCEDURE AND BUYER AND SELLER SHALL ATTEMPT TO SELECT AND PROPOSE JOINTLY TO THE COURT A MUTUALLY AGREEABLE RETIRED JUDGE AS A REFEREE AND, FAILING THAT, EACH OF BUYER AND SELLER SHALL RECOMMEND TO THE COURT A LIST OF RETIRED JUDGES WHO MAY SERVE AS THE REFEREE. TO THE EXTENT PERMITTED BY LAW, BUYER AND SELLER KNOWINGLY AND IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION TO RESOLVE ANY DISPUTE RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY PART THEREOF; AND IN CONNECTION WITH THIS AGREEMENT, EACH OF BUYER AND SELLER REPRESENTS THAT IT HAS DISCUSSED SUCH WAIVER WITH ITS OWN INDEPENDENT COUNSEL AND HAS RELIED ON ADVICE OF ITS COUNSEL AND MAKES SUCH WAIVER KNOWINGLY AND VOLUNTARILY. THE FOLLOWING MATTERS ARE EXCLUDED FROM JUDICIAL REFERENCE: ANY MATTER THAT IS WITHIN THE JURISDICTION OF A PROBATE, SMALL CLAIMS OR BANKRUPTCY COURT. IN ADDITION, THE FILING OF A COURT ACTION TO ENABLE THE RECORDING OF A NOTICE OF PENDING ACTION, FOR ORDER OF ATTACHMENT, RECEIVERSHIP, INJUNCTION, OR OTHER PROVISIONAL REMEDIES, SHALL BE PERMITTED NOTWITHSTANDING THE PARTIES AGREEMENT TO PURSUE JUDICIAL REFERENCE.

**Section 11.14 Further Assurances.** Each party will execute such other and further documents and instruments as may be reasonably necessary or proper in order to consummate the transactions contemplated by this Agreement. Seller shall, upon written request therefor, execute

and deliver to Buyer, its successors or assigns, any reasonable new or confirmatory instruments and do and perform any other reasonable acts (at no out of pocket cost to Seller) which Buyer or its successors or assigns, may reasonably request in order to fully transfer possession and control of the Property intended to be transferred and assigned hereby, provided the same shall not affect Seller's rights or obligations hereunder or under the Ancillary Agreements. This Section 11.14 shall survive the Closing.

**Section 11.15 Time of Essence.** Time is of the essence of this Agreement.

**Section 11.16 No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the party making the waiver.

**Section 11.17 Not an Offer.** The preparation or distribution of drafts hereof by one party to the other shall not be deemed to constitute an offer and this Agreement shall only become binding and enforceable upon execution hereof by both parties.

**Section 11.18 No Third Party Beneficiaries.** Nothing in this Agreement is intended to benefit any third party, or create any third party beneficiary.

**Section 11.19 No Recording.** No party shall record this Agreement or any copy hereof in any public records.

**Section 11.20 Exchange.** If requested by either party hereto, the other party shall cooperate with the requesting party in reasonable ways to effect an exchange of the Property that qualifies for nonrecognition treatment pursuant to Section 1031 of the Code. Any such exchange shall not delay or postpone the Closing Date; the cooperating party shall have no liability to the requesting party if the exchange fails to qualify for such nonrecognition treatment; the requesting party shall not be released from its obligations under this Agreement if the exchange fails for any reason; the exchange shall be at no expense to the cooperating party; the cooperating party shall not be required to acquire title to any proposed exchange properties to accommodate the requesting party's exchange; and the cooperating party shall not be required to assume any additional obligations or liabilities in connection with the exchange or attempted exchange. The requesting party shall indemnify and defend the cooperating party against and hold the cooperating party harmless from all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, costs of expert witnesses, court costs and other litigation expenses) arising from or related to any participation in the exchange or attempted exchange.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**SELLER:**

ALAMEDA HOSPITALITY LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

HOUSING AUTHORITY OF THE CITY OF ALAMEDA,  
a California body corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**ESCROW AGENT:**

The Escrow Agent is executing this Agreement to evidence its agreement to hold the Deposit and act as escrow agent in accordance with the terms and conditions of this Agreement.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LIST OF EXHIBITS**

- EXHIBIT A:** Legal Description of Land
- EXHIBIT B:** Documents required during Diligence Period
- EXHIBIT C:** Form of Grant Deed
- EXHIBIT D:** Form of Bill of Sale
- EXHIBIT E:** Form of Assignment and Assumption of Contracts, Warranties, Guaranties and Other Intangible Property
- EXHIBIT F:** Form of Seller's Non-Foreign Affidavit
- EXHIBIT G:** Form of Tenant Notice Letter

**EXHIBIT A**

**Legal Description of Land**

**EXHIBIT B**

**Documents Required During Diligence Period**

1. As-built plans/specs (electrical, mechanical structural). Concept designs for additional improvements
2. Existing inspection reports (roofing, HVAC, seismic, soils)
3. Prior Property condition assessments, including as needed, structural, mechanical, code compliance and ADA compliance.
4. Existing or former environmental reports and studies
5. Building permit, licenses, certificates of occupancy or conditional use permits
6. 12 months utility (gas, electrical, water) bills
7. Building warranties/guarantees
8. List of personal property
9. Site plans, brochures, maps and photographs
10. Copies of existing leases, service contracts; retail leases
11. Three years operating costs/financials
12. Description of repairs done in last three years

**EXHIBIT C**

**Form of Grant Deed**

WHEN RECORDED MAIL TO:     )  
   )  
   )  
   )  
   )  
   )  
 MAIL TAX STATEMENTS TO:    )  
   )  
   )  
   )  
   )

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(Space above for Recorder’s Use Only)

**GRANT DEED**

**FOR VALUE RECEIVED**, the receipt and sufficiency of which are hereby acknowledged, ALAMEDA HOSPITALITY LLC, a California limited liability company, hereby grants to ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation, all of that certain real property more particularly described in **Schedule 1** attached hereto and incorporated herein by this reference, subject to (a) all non-delinquent real property taxes, (b) all non-delinquent special assessments, if any.

**Dated:** \_\_\_\_\_, 2022

DRAFT

SCHEDULE 1

[add signature block & notary form]

EXHIBIT C

**EXHIBIT D**

**BILL OF SALE**

For good and valuable consideration, the receipt of which is hereby acknowledged, ALAMEDA HOSPITALITY LLC, a California limited liability company ("**Seller**"), does hereby sell, transfer, and convey to ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation ("**Buyer**") any and all personal property (the "**Personal Property**") owned by Seller and used in connection with the operation of that certain real property more particularly described in on **Schedule 1** attached hereto.

The Personal Property transferred hereby is transferred "AS IS", "WHERE IS" and "WITH ALL FAULTS", and without any representation or warranty whatsoever.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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SCHEDULE 1

LEGAL DESCRIPTION

EXHIBIT D

**EXHIBIT E**

**Form of Assignment and Assumption of Leases, Contracts, Warranties,  
Guaranties and Other Intangible Property**

THIS ASSIGNMENT AND ASSUMPTION (the “**Assignment**”) dated as of \_\_\_\_\_ 2022, is between ALAMEDA HOSPITALITY LLC, a California limited liability company (“**Assignor**”), and ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation (“**Assignee**”).

1. Pursuant to that certain Agreement of Sale and Purchase dated as of [\_\_\_\_\_, 2022] (the “**Purchase Agreement**”) Assignor has conveyed to Assignee that certain real property legally described on **Schedule 1** attached hereto and incorporated herein by this reference (the “**Property**”). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns and transfers to Assignee as of the date title to the Property is transferred to Assignee (the “**Transfer Date**”), all of the following relating to the Property, to the extent assignable, and without representation or warranty of any kind whatsoever, express or implied:

(a) any and all of Assignor’s right, title and interest, as lessor, in, to and under those certain leases, licenses and occupancy agreements affecting the Property more particularly described on **Schedule 2** attached hereto and incorporated herein by this reference (the “**Leases**”);

(b) any and all of Assignor’s right, title and interest in, to and under those certain assignable contracts and agreements relating to the leasing, operation, maintenance and repair of Property more particularly described on **Schedule 3** attached hereto and incorporated herein by this reference (the “**Service Agreements**”);

(c) any and all assignable governmental licenses, permits, certificates (including certificates of completion and certificates of occupancy), authorizations and approvals held by Assignor in connection with the current occupancy, use and operation of, and construction upon, the Property (collectively, the “**Permits**”); and

(d) any and all assignable warranties and guaranties including, without limitation, contractor’s, architect’s and manufacturer’s warranties and guaranties held by Assignor and given by third parties with respect to the Property (collectively, the “**Warranties**”).

2. Assignee accepts this Assignment and hereby assumes and agrees to perform all of the covenants, agreements and obligations of the lessor under the Leases accruing with respect to the period from and after the Transfer Date and all of Assignor’s covenants, agreements and obligations under the Service Agreements, Permits and Warranties accruing with respect to the period from and after the Transfer Date.

3. If legal action is commenced to enforce or to declare the effect of any provision of this Assignment, or any document executed in connection with this Assignment, the prevailing party shall be entitled to recover from the non-prevailing party attorneys' fees and other litigation costs. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit on this Assignment or any document executed in connection with this Assignment shall be entitled to its attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Assignment or any document executed in connection with this Assignment into any judgment on this Assignment or any document executed in connection with this Assignment.

4. This Assignment shall be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors in interest and assigns.

5. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

6. Nothing contained herein shall be deemed or construed as modifying the respective rights, obligations and liabilities of Assignor and Assignee and/or limitations thereon, under the Purchase Agreement.

[Signatures Appear On The Following Page.]

IN WITNESS WHEREOF, this Assignment and Assumption is made as of the day and year first above written.

Assignor and Assignee have executed this Agreement the day and year first above written.

**ASSIGNOR:**

ALAMEDA HOSPITALITY LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

HOUSING AUTHORITY OF THE CITY OF ALAMEDA,  
a California body corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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SCHEDULE 1

LEGAL DESCRIPTION

EXHIBIT E

DRAFT

SCHEDULE 2

LEASES

EXHIBIT E

DRAFT

SCHEDULE 3  
SERVICE AGREEMENTS

EXHIBIT E

**EXHIBIT F****Form of Seller's Non-Foreign Affidavit**

Under Section 1445 of the Internal Revenue Code of 1986, as amended (the "**US Code**"), and Sections 18805 and 26131 of the California Revenue and taxation Code, a transferee of California real property interest must withhold tax if the transferor is a foreign person or a non-resident of California. To inform ALAMEDA AFFORDABLE HOUSING CORPORATION, a California nonprofit public benefit corporation (the "**Transferee**"), that withholding of tax will not be required upon the transfer to Transferee by ALAMEDA HOSPITALITY LLC, a California limited liability company (the "**Transferor**"), of that certain real property located in the State of California and more particularly described in **Exhibit 1** attached hereto (the "**Property**"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate, as those terms are defined in the US Code and the Income Tax Regulations promulgated thereunder;
2. Transferor's U.S. employer identification number is [\_\_\_\_\_]; and
3. Transferor has a permanent place of business in [\_\_\_\_\_], California. The office address of Transferor's permanent place of business in California is [\_\_\_\_\_, \_\_\_\_\_, CA \_\_\_\_].
4. Transferor is not a disregarded entity as defined in §1.1445.2(b)(2)(iii).

Transferor understands that this Certification may be disclosed to the Internal Revenue Service and/or the California Franchise Tax board and that any false statement contained herein could be punished by fine, imprisonment, or both.

Transferor understands that Transferee is relying on this Certificate in determining whether withholding is or will be required in connection with the transfer of the Property by Transferor to Transferee, and that Transferee may face liabilities if any statement contained in this certificate is false.

Transferor hereby indemnifies Transferee, and agrees to hold Transferee harmless, from any liability or cost which such Transferee may incur as a result of: (i) the Transferor's failure to pay any U.S. Federal Income tax which Transferor is required to pay under applicable federal law, (ii) the Transferor's failure to pay California State Income Tax which Transferor is required to pay under applicable California law, or (iii) any false or misleading statement contained herein.

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge declare that I have authority to sign this document on behalf of Transferor.

DRAFT

EXHIBIT 1  
LEGAL DESCRIPTION

EXHIBIT F

**EXHIBIT G**

**TENANT NOTICE LETTER**

**STATEMENT TO TENANT RE: TRANSFER AND SECURITY DEPOSIT**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Name of Tenant

\_\_\_\_\_  
Address

Dear Tenant:

On \_\_\_\_\_, 20\_\_, the property commonly known as [Adaptive Reuse Project], located at 1628 Webster Street, Alameda, CA 94501 (the "**Property**") in which you are a tenant, was sold to \_\_\_\_\_ ("**Buyer**") whose address is: \_\_\_\_\_. You are provided with the following information relating to the transfer of your security deposit from us to Buyer:

Name of Tenant: \_\_\_\_\_

Suite or Unit Number: \_\_\_\_\_

Amount of your original deposit: \$ \_\_\_\_\_

Nature of our claims made against your deposit:

\_\_\_\_\_

\_\_\_\_\_

Amount of our claims made against your deposit: \$ \_\_\_\_\_

Balance of deposit transferred to Buyer: \$ \_\_\_\_\_

Buyer's name and address:

\_\_\_\_\_

\_\_\_\_\_

Effective with the transfer of the Property to Buyer, Buyer has assumed all obligations of the landlord under your lease of the Property. Please direct all future rent payments and/or inquiries with respect to the Property or your lease to Buyer at the above address.

Very truly yours,

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

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

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

Title: \_\_\_\_\_



**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Sylvia Martinez, Director of Housing Development

Date: June 15, 2022

Re: Authorize the Executive Director, or her designee, to Execute an Option for Island City Development, or its affiliate, to purchase the Improvements at 1628 Webster Street.

---

### **BACKGROUND**

The Housing Authority has sought to acquire a contingent purchase and sale agreement with the owner of the property at 1628 Webster Street, in order to create additional affordable housing. If successful in this endeavor, the Housing Authority will partner with Island City Development to develop, own and operate the new affordable development. The Housing Authority has already approved an option to ground lease the land to Island City Development. In addition, Island City Development will need an option to purchase the improvements.

### **DISCUSSION**

The purchase of the improvements will occur concurrently with the purchase of the property (expected in June 2023, likely in a double escrow). The Purchase and Sale Agreement between the owner and the Housing Authority has been negotiated with this concept in mind. The cost will be the negotiated purchase price of the improvements so that the Housing Authority is only paying for the land, which it will retain as owner.

### **FISCAL IMPACT**

It is intended that there will not be any additional impact of the sale of the improvements to the Housing Authority, since the cost of the purchase will be taken on by Island City Development. The Housing Authority has already provided the option to ground lease at a subsidized payment, and approved other soft loans to make the development feasible. The option to purchase includes a clause that the Housing Authority soft loan can be structured as a seller carryback loan for the improvements, if desired.

### **CEQA**

Not Applicable.



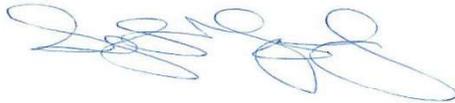
**RECOMMENDATION**

Authorize the Executive Director, or her designee, to Execute an Option for Island City Development, or its affiliate, to purchase the Improvements at 1628 Webster Street.

**ATTACHMENTS**

1. Att 1 Draft Form of 1628 Webster Option Agreement

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Sylvia Martinez', with a stylized flourish at the end.

Sylvia Martinez, Director of Housing Development

## Attach 1 Draft Form of 1628 Eagle Option Agreement

## OPTION AGREEMENT

THIS OPTION AGREEMENT (this “**Agreement**”) is effective as of [ ], 2022, by and between Housing Authority of the City of Alameda (“**Seller**”) and Island City Development, a California nonprofit public benefit corporation, or its assigns (“**Purchaser**”).

## RECITALS

A. Seller is in contract for the purchase of the land located in the City of Alameda, CA 94501, and described as 1628 Webster further described in Exhibit A attached hereto and incorporated herein by reference (the “**Land**”). The site currently includes commercial building improvements (the “**Improvements**”) situated on the Land.

B. Purchaser desires to procure, and Seller desires to grant, an option to enter into a purchase with respect to the Improvements upon the terms and provisions as hereinafter set forth. The fee interest in any Improvements to be developed on the Land are referred to collectively herein as the “**Property**”.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto agree as follows:

## AGREEMENT

1. Grant of Option. For One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Seller does hereby grant to Purchaser the exclusive right and option to acquire the Property (the “**Option**”).

2. Exercise of Option. Purchaser may exercise its Option at any time during the period commencing on the date hereof and expiring on March 30, 2024 (the “**Option Term**”), by giving written notice thereof to Seller. In the event the Purchaser does not exercise its Option during the Option Term, this Agreement shall become null and void and neither party hereto shall have any other liability, obligation or duty hereunder.

3. Contract For Purchase of the Improvements. In the event that the Purchaser exercises the Option, unless otherwise mutually agreed, both parties agree to execute a contract in accordance with the following terms and conditions:

(a) Price. The purchase contract shall have the following terms: (a) have base price equal to the Housing Authority’s negotiated purchase price of the Improvements, and (b) such other terms and conditions agreed upon by Seller and Purchaser.

(b) Financing. Seller may agree to provide seller takeback financing for a portion of the purchase price; bearing interest at the applicable federal rate; with a term of 55 years (or a lesser term if elected by Purchaser); secured by a mortgage against the Property; subordinate to a senior construction to permanent bank loan and any other loans from governmental agencies;

repaid from residual receipts (after payment of developer fee, general partner management fee of \$25,000 per year with an annual increase of 3%, and an investor asset management fee of \$5,000 per year with an annual increase of 3%); and subject to commercially reasonable terms, including those in favor of an investor, for low income housing tax credit projects.

(c) Closing Date. The closing date shall be on any date during the Option Term as may be selected by Purchaser, provided that Purchaser shall make good faith efforts to provide 30 days prior notice of the closing date.

(d) Closing Costs. The Purchaser and Seller shall each pay their respective costs of closing the purchase in accordance with custom in the city in which the Property is located.

(e) As Is. Except as specifically provided in writing by Seller, Purchaser shall acquire the Property in an “as-is” condition with an ALTA owner’s title policy with such endorsements as Purchaser shall reasonably require, subject only to those monetary encumbrances recorded against the Property as agreed to in writing by Purchaser.

(f) Subdivision. Seller and Purchaser shall cooperate in causing the Land to be a separate legal parcel under applicable law, which shall be a condition precedent to closing under this Agreement. At the election of Purchaser, Purchaser may cause the Land to be further subdivided into 2 separate legal parcels or converted to a condominium with 2 condo units, in which case (1) Seller shall reasonably cooperate with such subdivision or conversion efforts, and (2) this Agreement shall be replaced with 2 separate option agreements for the 2 parcels or units, each with the same terms and conditions as in this Agreement.

(g) Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(i) Except as otherwise permitted by Purchaser in writing in its sole discretion, Seller shall (A) maintain and operate the Property in its current condition and operation; (B) not enter into any lease, agreement or contract or a modification thereof (including existing loans or liens on the Property) affecting the Property unless such lease, agreement or contract shall terminate upon transfer of the Property or is approved by Purchaser in its sole discretion; (C) comply with all material contracts, agreements and obligations with respect to the Property; (D) maintain current amounts of fire, extended coverage, hazard and other insurance for the Property; and (E) not sell, assign, dispose of or further encumber the Property.

(ii) Seller shall not commit or permit any act that would diminish or devalue the Property or Purchaser’s rights under this Agreement.

(iii) Seller shall within 20 days of the date hereof provide to Purchaser all documents, contracts, agreements and other information regarding the Property that is within the possession or control of Seller.

(iv) During the Option Term, Purchaser and its agents shall have the right, upon reasonable notice and during reasonable times and without unreasonably interfering with the normal operation of the Property, to enter upon the Property to conduct inspections and testing (including surveying and environmental assessments), and to inspect and copy Seller’s

books and records with respect to the Property. Seller shall reasonably cooperate with Purchaser in inspecting and evaluating the Property, applying for or obtaining financing for the Property and obtaining entitlements or permits with respect to the Property.

4. General Provisions.

(a) Entire Agreement. This Agreement contains the entire agreement between the parties, and supersedes all prior negotiations, drafts, and other understandings which the parties may have had concerning the subject matter hereof.

(b) Time. Time is of the essence of this Agreement.

(c) Successors. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the heirs, successors, executors, administrators and assigns of the parties hereto. Seller agrees that Purchaser shall have the right to assign this Agreement or to nominate another person (including, without limitation, a limited partnership controlled by Purchaser) to take title to the Property without Seller's consent.

(d) Amendments. This Agreement may not be amended or modified except by written documents signed by all parties hereto.

(e) Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by, or invalid under, applicable law, the remainder of this Agreement and any other application of such provision shall not be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together shall constitute one and the same Agreement.

(g) Notice. Any notice, demand, request, consent or other communication which either party desires or is required to give to any other party shall be in writing and shall be deemed to have been given when either: (a) delivered in person or by facsimile transfer, or (b) sent by overnight courier or first-class registered or certified mail, postage pre-paid, return receipt requested, addressed to such party at the address set forth following each party's signature to this Agreement. Either party may designate another address for itself at any time upon written notice to the other party.

(h) Headings. The titles and headings of the various sections of this Agreement have been inserted only for convenience of reference. They are not part of this Agreement and may not be used to construe or interpret any of the terms hereof.

(i) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**SELLER:**

Housing Authority of the City of Alameda,  
a public body corporate and politic

By: \_\_\_\_\_  
Vanessa Cooper  
Executive Director

Address:

Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attn: Executive Director

**PURCHASER:**

Island City Development,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Vanessa Cooper  
President

Address:

Island City Development  
c/o Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attn: Executive Director

EXHIBIT A  
Legal Description



**PHONE:** (510) 747-4300  
**FAX:** (510) 522-7848  
**TTY/TRS:** 711

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701 Atlantic Avenue • Alameda, California 94501-2161

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To: Honorable Chair and Members of the Board of Commissioners

From: Vanessa Cooper, Executive Director

Date: June 15, 2022

Re: Adopt Resolution of the Board of Commissioners of the Housing Authority of the City of Alameda Ratifying the Proclamation of a State of Emergency by the Governor of the State of California on March 4, 2021, and Making Findings Authorizing Continued Remote Teleconference Meetings of the Board of Commissioners Pursuant to Brown Act Provisions, as amended by Assembly Bill No. 361.

---

### **BACKGROUND**

On March 17, 2020, Governor Newsom issued Executive Order N-29-20 which allowed for relaxed provisions of the Ralph M. Brown Act (Brown Act) that allowed legislative bodies to conduct meetings through teleconferencing without having to meet the strict compliance of the Brown Act. All provisions of Executive Order N-29-20 concerning the conduct of public meetings via teleconferencing expired on September 30, 2021.

### **DISCUSSION**

Assembly Bill 361(Chapter 165,Statutes of 2021) (AB 361) was signed into law by the Governor on September 16, 2021, and went into effect immediately. It amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology after the September 30, 2021 expiration of the current Brown Act exemptions as long as there is a "proclaimed state of emergency" by the Governor. This allowance also depends on state or local officials imposing or recommending measures that promote social distancing or a legislative body finding that meeting in person would present an imminent safety risk to attendees. Though adopted in the context of the pandemic, AB 361 will allow for virtual meetings during other proclaimed emergencies, such as earthquakes or wildfires, where physical attendance may present a risk. AB 361 will sunset on January 1, 2024.

AB 361 requires the following to continue to conduct teleconferenced meetings:

1. Notice of the meeting must still be given in compliance with the Brown Act, and the notice must include the means by which the public may access the meeting



- and provide public comment remotely.
2. The public must be provided access to the meeting via a call-in option or internet-based service option and allowed to “address the legislative body directly.” The Alameda Affordable Housing Corporation does not have to provide an in-person option for the public to attend the meeting.
  3. The meeting must be conducted “in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.”
  4. If there is a disruption to the meeting broadcast or in the ability to take call-in or internet-based public comment, no further action can be taken on agenda items until the issue is resolved, even if this means stopping the meeting at that point and continuing all remaining items.
  5. The Board of Directors cannot require comments to be submitted before the start of the meeting. The public must be allowed to make “real time” public comment.
  6. Reasonable time for public comment must be provided. If the Board provides a timed public comment period, the public comment period must be left open until the time expires.
  7. All votes must be taken by roll call.
  8. The Board of Directors must approve a resolution making findings by majority vote within 30 days of the first teleconferenced meeting under AB 361 and every 30 days thereafter to continue to conduct teleconference meetings under AB 361. The body must find it has reconsidered the circumstances of the state of emergency and either 1) the emergency continues to impact the ability to meet safely in person, or 2) State or local officials continue to impose or recommend social distancing.

In light of AB 361, the continuing COVID-19 State of Emergency declared by the Governor, the continuing Local Emergency declared by the City of Alameda, the continuing recommendations by the County of Alameda Health Officer of social distancing as a mechanism for preventing the spread of COVID-19, and the continued threats to health and safety posed by indoor public meetings, staff recommends the Board of Directors adopt the proposed Resolution making the findings required to initially invoke AB 361.

The procedures currently set up for Board of Directors' meetings, which provide public attendance and comment through a call-in or internet-based service option, satisfy the requirements of AB 361. The Executive Director, or designee, will work with the Board to ensure that meeting procedures for all teleconferenced meetings comply with AB 361. Continued reliance will require the Board of Directors to adopt a new resolution making required findings every 30 days.

**FISCAL IMPACT**

None.

**CEQA**

N/A

**RECOMMENDATION**

Adopt Resolution of the Board of Directors of the Alameda Affordable Housing Corporation Ratifying the Proclamation of a State of Emergency by the Governor of the State of California on March 4, 2021, and Making Findings Authorizing Continued Remote Teleconference Meetings of the Board of Directors Pursuant to Brown Act Provisions, as amended by Assembly Bill No. 361.

**ATTACHMENTS**

1. DRAFT RESOLUTION No. 1036 - AB 361 Resolution (06.15.22)
2. AB 361.pdf 2021\_danprint

Respectfully submitted,

A handwritten signature in blue ink that reads "Vanessa Cooper".

Vanessa Cooper, Executive Director

HOUSING AUTHORITY OF THE CITY OF ALAMEDA  
*Resolution No. 1036*

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF ALAMEDA RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF CALIFORNIA ON MARCH 4, 2021, AND MAKING FINDINGS AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE BOARD OF COMMISSIONERS PURSUANT TO BROWN ACT PROVISIONS, AS AMENDED BY ASSEMBLY BILL NO.

361

WHEREAS, the Housing Authority of the City of Alameda ("Housing Authority") is committed to preserving and nurturing public access and participation in meetings of the Board of Commissioners; and

WHEREAS, all meetings of the Housing Authority's Board of Commissioners are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the Housing Authority's Board of Commissioners conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist within the jurisdiction of the Housing Authority which includes the City of Alameda, specifically, on March 17, 2020 the Governor of the State of California proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, as a result of the COVID-19 pandemic the California Department of Health and the Health Officer of the County of Alameda continue to recommend measures to promote social distancing. Additionally, On March 17, 2020, in response to the COVID-19 pandemic, the City Council of the City of Alameda, declared a local emergency as set forth in Ordinance No. 3267; and

WHEREAS, the Board of Commissioners does hereby find that the COVID-19 pandemic has caused, and will continue to cause, imminent risk to the health and safety of attendees meeting in person for a Board of Commissioners' meeting, and the COVID-19 pandemic has caused conditions of peril to the safety of persons within the jurisdiction of the Housing Authority that are likely to be beyond the control of services, personnel, equipment, and facilities of the Housing Authority, and desires to ratify the proclamation of a local emergency by the City of Alameda, ratify the proclamation of a state of emergency by the Governor of the State of California and ratify the California Department of Health and the Health Officer of the County of Alameda's recommended measures to promote social distancing; and

WHEREAS, as a consequence of the local emergency and state of emergency the Board of Commissioners does hereby find that the Board of Commissioners of the Housing Authority shall conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that the Board of Commissioners shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of Government Code section 54953; and

WHEREAS, when holding teleconferenced meetings under abbreviated teleconferencing procedures permitted under the Brown Act, the Housing Authority will ensure access for the public by complying with all requirements set forth in Government Code section 54953(e), including, but not limited to, giving notice of the meeting and posting agendas, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF ALAMEDA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Reconsideration. The Board hereby reconsiders the circumstances of the state of emergency.

Section 3. Ratification of the City of Alameda's Proclamation of a Local Emergency. The Board hereby ratifies the City of Alameda's proclamation of a Local Emergency as set forth in Ordinance No. 3267 adopted on March 17, 2020.

Section 4. Ratification of the California Department of Health and the Health Officer of the County of Alameda's recommended measures to promote social distancing. The Board hereby finds that state and local officials continue to recommend measures to

promote social distancing. The Board further hereby ratifies the California Department of Health and the Health Officer of the County of Alameda's recommended measures to promote social distancing and finds that, as a result of the state of emergency, meeting in person would present imminent risk to the health or safety of attendees.

Section 5. Ratification of Governor's Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020, and hereby finds that the state of emergency continues to directly impact the ability of the Board of Commissioners and members of the public to meet safely in person.

Section 6. Remote Teleconference Meetings. The Housing Authority's Executive Director, and designee, and the Board of Commissioners are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continued teleconferencing and conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 7. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) 30 days from the adoption of this Resolution, or, (ii) such time as the Board of Commissioners adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the Board of Commissioners of the Housing Authority may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED by the Board of Commissioners of the Housing Authority of the City of Alameda this 15th day of June, 2022, by the following vote:

AYES: \_\_\_\_\_ NOES: \_\_\_\_\_ ABSTENTIONS: \_\_\_\_ ABSENT: \_\_\_\_

ATTEST:

\_\_\_\_\_  
Vanessa M. Cooper  
Secretary Board of Commissioners

\_\_\_\_\_  
Kenji Tamaoki, Acting Chair  
Board of Commissioners

Adopted: June 15, 2022

## Assembly Bill No. 361

### CHAPTER 165

An act to add and repeal Section 89305.6 of the Education Code, and to amend, repeal, and add Section 54953 of, and to add and repeal Section 11133 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2021. Filed with  
Secretary of State September 16, 2021.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 361, Robert Rivas. Open meetings: state and local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly

resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a legislative body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

(2) Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor’s Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(3) Existing law establishes the various campuses of the California State University under the administration of the Trustees of the California State University, and authorizes the establishment of student body organizations in connection with the operations of California State University campuses.

The Gloria Romero Open Meetings Act of 2000 generally requires a legislative body, as defined, of a student body organization to conduct its business in a meeting that is open and public. The act authorizes the legislative body to use teleconferencing, as defined, for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a legislative body, as defined for purposes of the act, to hold public meetings through teleconferencing and

to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body. With respect to a legislative body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location. Under the bill, a legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. The bill would require that each legislative body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge legislative bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(4) This bill would declare the Legislature’s intent, consistent with the Governor’s Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

(5) This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 339 to be operative only if this bill and AB 339 are enacted and this bill is enacted last.

(6) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(7) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 89305.6 is added to the Education Code, to read:  
89305.6. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing

and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2. Section 11133 is added to the Government Code, to read:

11133. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically

or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body

shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter

2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for

the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting

of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting,

members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the

legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint

powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5. Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6. It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 7. The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8. (a) The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(b) The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

(2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member’s private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public’s right to access information concerning the conduct of the people’s business.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

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