

MAINTENANCE SERVICES AGREEMENT – DRAFT

THIS AGREEMENT, entered into this [REDACTED] day of [REDACTED], 20[REDACTED], by and between HOUSING AUTHORITY OF **THE CITY OF ALAMEDA**, a public body corporate and politic (hereinafter referred to as "AHA"), and [REDACTED] (a [REDACTED]) whose address is [REDACTED] (hereinafter referred to as Contractor), is made with reference to the following:

RECITALS:

A. AHA is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.

B. Contractor is specially trained, experienced, and competent to perform the special services which will be required by this Agreement; and

C. Contractor possesses the skill, experience, ability, background, applicable certification, and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. AHA and Contractor desire to enter into an agreement for [REDACTED] Services.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

The term of this Agreement shall commence on [REDACTED], 20[REDACTED] and end on [REDACTED], 20[REDACTED] unless extended, as discussed herein, or terminated earlier as provided in Paragraph 19 below ("Term"). The parties may choose by mutual agreement to extend the term of this Agreement up to a maximum of 60 months (5 years total) and shall do so by executing a written amendment to the Agreement. All indemnification and hold harmless provisions in this Agreement shall survive the termination of this Agreement.

2. **SERVICES TO BE PERFORMED:**

Contractor shall perform services or work according to the schedule set forth in Exhibit "B" which is attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONTRACTOR:**

AHA agrees to compensate Contractor pursuant to the terms and conditions of this Agreement only for the performance, to the reasonable satisfaction of AHA, of those tasks which take place during the term of this Agreement. AHA will not be obligated to compensate Contractor for any work, services, or functions performed by Contractor which do not arise directly from the performance of tasks relating to the Scope of Services as outlined in Exhibit B, and according to the Fee Schedule set forth in also in Exhibit A. AHA shall pay Contractor within thirty (30) days receipt of Contractor's properly submitted invoice.

Total compensation under this contract will not exceed fifty thousand (\$50,000) dollars.

a. **LIENS:**

1. Contractor's Obligation to Maintain Lien-Free Title. If any claim of mechanic's lien or stop notice is filed or made against Property in connection with the Work, the Contractor shall immediately pay and fully discharge the mechanic's lien or stop notice claim, or, in the alternative, may deliver to Owner a release of lien or stop notice by surety bond in a legally sufficient form and amount to discharge the mechanic's lien or stop notice. If the Contractor fails to immediately provide the documentation, deposits, records of payment or surety

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

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

4. **TIME IS OF THE ESSENCE:**

Contractor and AHA agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

Contractor agrees to perform all services or work hereunder in a manner commensurate with the existing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the AHA nor have any contractual relationship with AHA.

6. **INDEPENDENT PARTIES:**

AHA and Contractor intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No right of employment will be acquired by virtue of Contractor's services. None of the benefits provided by AHA to its employees, including but not limited to unemployment insurance, workers' compensation coverage, vacation and sick leave are available from AHA to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

AHA and Contractor agree that during the term of this Agreement and for a period of one year after termination, the parties shall not solicit for employment, hire, or retain, whether as an employee or independent contractor, any person who is or has been employed by the other without written agreement by the other party.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Contractor assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal or state rules and regulations. Contractor shall indemnify and hold AHA harmless from and against any loss, damage, liability, costs, or expenses arising from any noncompliance of this provision by Contractor.

8. **NON-DISCRIMINATION:**

Contractor shall comply with the following nondiscrimination requirements: Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608. During the performance of the Contract, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or disability, under any work performed pursuant to the Contract, as required by the laws set forth above and all implementing regulations.

9. **INDEMNIFICATION/HOLD HARMLESS:**

Contractor shall indemnify, defend, and hold harmless AHA, its Board of Commissioners officials, employees, and designated volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor. However, Contractor shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

10. **INSURANCE:**

Without limiting or diminishing the Contractor's obligation to indemnify or hold the AHA harmless, Contractor shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. On or before the commencement of the terms of this Agreement, Contractor shall furnish AHA with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Exhibit C.

a. **WAIVER OF SUBROGATION:**

Contractor hereby grants to AHA a waiver of any right to subrogation which any insurer of said Contractor may acquire against AHA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether AHA has received a waiver of subrogation endorsement from the Insurer.

b. **FAILURE TO SECURE:**

If Contractor, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, AHA shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

c. **ADDITIONAL INSURED:**

The Housing Authority of the City of Alameda and its affiliates, Alameda Affordable Housing Corporation and Island City Development and its Subsidiaries, and their departments, their respective directors, officers, Boards of Commissioners, employees, designated volunteers, elected or appointed officials, (AHA), are to be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

d. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by AHA are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

Contractor shall pass down the insurance obligations contained herein to all tiers of subcontractors

working under this Agreement.

Contractor agrees to notify AHA in writing of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

11. **CONFLICT OF INTEREST:**

Contractor warrants that it is not a conflict of interest for Contractor to perform the services or work required by this Agreement. Contractor may be required to fill out a conflict of interest form if the services provided under this Agreement require Contractor to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. **PROHIBITION AGAINST ASSIGNMENTS:**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without prior written consent of AHA. Any attempt to do so without said consent shall be null and void, and any assignee, sub lessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. However, claims for money by Contractor from AHA under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent, but written notice of such assignment shall be promptly furnished to AHA by Contractor.

13. **SUBCONTRACTOR APPROVAL:**

Unless prior written consent from AHA is obtained, only those people and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement. In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of worker's compensation insurance and shall also be required to carry general and automobile liability in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. **PERMITS AND LICENSES:**

Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates, and licenses, including, but not limited to, a City of Alameda business license, that may be required in connection with the performance of services hereunder.

a. **CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 7030:**

Contractors are required by law to be licensed and regulated by the contractors' state license board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patient act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

15. **USE OF PROPERTY**

a. **EQUIPMENT:**

The Contractor shall confine operations at the Property to areas permitted by applicable permits and as indicated by Owner and shall not unreasonably encumber the Property with materials or equipment. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Property by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Property. Protection of construction materials and equipment stored at the Property from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

b. **ACCESS:**

The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable and safe access, both vehicular and pedestrian, to the site of the Work and all adjacent areas including necessary emergency ingress and egress. The Work shall be performed, to the fullest extent reasonably possible, in such manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Vehicle access shall only be along public and private roads and any parked vehicles shall not obstruct access.

c. **TENANTS:**

The Contractor acknowledges that tenants shall be occupying the Property while the Contractor is performing the Work. The Contractor shall take all necessary precautions to ensure that the Work is performed in such a manner so as not to endanger, threaten, or impair the safety of tenants and guest and invitees to the Property or to materially interfere with tenants' use and access to the Property, and shall construct and maintain reasonable safeguards as required by the condition and progress of the Work. Contractor shall take all reasonably available efforts to eliminate unnecessary noise, dust, or obstructions during the performance of the Work. Contractor shall ensure that all subcontractors are aware that the Property will be occupied during the performance of the Work and shall require in all subcontracts that subcontractors take necessary safety precautions when performing work on the Property including proper handling, treating, and disposing of any potentially hazardous materials found on the Property.

d. PROTECTION OF WORK AREA:

The Contractor shall take care to protect the premises surrounding the Work areas including but not limited to existing utilities, equipment, vegetation, interior flooring, and walls to the extent impacted by the performance of the Work and shall utilize protective coverings as appropriate. Contractor shall be responsible for repairing any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage promptly, the Owner may have the necessary work performed and charge the cost to the Contractor.

e. SITE CLEANUP:

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The Contractor shall perform daily clean-up of the site of all construction materials, dust, and debris.

f. UTILITIES:

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

16. SAFETY PRECAUTIONS AND PROGRAMS

a. PHYSICAL CONDITIONS AND SAFETY RESPONSIBILITY:

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and for providing safe conditions for the performance of the Work. The Owner shall have no liability or responsibility for the physical condition or safety of the site or any improvements made by the Contractor and located on the Property until acceptance of the Work by the Owner. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

1. Employees at the Property and other persons who may be affected thereby;
2. The materials and equipment to be used in connection with the performance of the Work, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and
3. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of the Work.

b. **NOTICES:**

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

c. **CONDITIONS AND NOTIFICATIONS**

The Contractor shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying the residents of the Property and owners and users of adjacent sites and utilities.

d. **REMEDIES:**

The Contractor shall promptly remedy damage and loss to property referred to in Subsections 2.5(b)(2) and (3) above, to the extent caused by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subsections 2.5(b)(2) and (3), except damage or loss attributable to acts or omissions of the Owner and not attributable to the fault or negligence of the Contractor.

e. **DESIGNATIONS:**

The Contractor shall designate a responsible member of the Contractor's organization at the Property whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

f. **COVERINGS:**

When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Improvements, as necessary, from injury by any cause.

g. **ACCIDENT REPORTING:**

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

17. **HAZARDOUS MATERIALS**

a. **SITE RESTRICTIONS:**

Contractor shall not permit any hazardous material or substance to be brought to or used on the site except to the extent such hazardous material or substance is necessary to and customarily used in the construction of projects like the Work. Any hazardous material brought or used on the site by the Contractor, any subcontractor, any material supplier, or any entity for whom any of them is responsible, shall be used, stored, and disposed of in compliance with all applicable laws related to such hazardous materials or substances. Any damage to the property resulting from the improper storage or use of hazardous materials or substances shall be remedied by the Contractor at its sole cost and expense in accordance with applicable laws. The Contractor shall provide the Owner notice of any release of hazardous materials or substance at the site. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the site by the Contractor, any subcontractor, any material supplier, or any entity for whom any of them is responsible.

b. **HAULING AND DISPOSAL:**

If Contractor's scope of work includes the off-haul of contaminated soil, hazardous materials (including asbestos) remediation, lead-based paint removal, or mold remediation, Contractor shall comply with the requirements of all applicable federal, state and local laws in the removal, transportation and disposal

of the materials, including the Lead-Based Poisoning Prevention Act (42 USC 4821 et seq.), the Residential Lead Based Paint Hazard Reduction Act (42 USC. 4851 et seq.) and implementing regulations at 24 CFR Part 35. Contractor shall obtain all necessary permits for any contaminated soil or hazardous materials or mold removal work. Contractor shall ensure that any subcontractor performing any removal or remediation work possesses the necessary expertise, insurance, and licenses. All contaminated and hazardous material shall be transported to an appropriately permitted facility. The Contractor shall and shall cause any subcontractors performing the removal and remediation work to take all necessary safety precautions during the performance of the work including but not limited to necessary protection of surrounding areas to prevent the spread of contamination, and the protection of workers performing the removal and remediation work.

18. INSPECTIONS

Contractor shall, upon written request, permit and facilitate, and shall require its subcontractors to permit and facilitate, observation and inspection by the Owner through its agents or employees, the Owner's lenders, and their authorized representatives, and by public authorities during reasonable business hours for the purposes of determining compliance with this Contract including but not limited to safety and labor compliance. Any review or inspection undertaken by the Owner with reference to the Work is solely for the purpose of determining whether Contractor is properly discharging its obligations to the Owner and should not be relied upon by Contractor or by any third parties as a warranty or representation by the Owner as to the quality of the Work or compliance with applicable laws.

19. REPORTS:

A Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report" reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement shall be the exclusive property of AHA Contractor shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to AHA the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of AHA, and all publication rights are reserved to AHA.

B. All Reports prepared by Contractor may be used by AHA in execution or implementation of:

- (1) The original Project for which Contractor was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original project; and/or
- (4) Other AHA projects as appropriate.

C. Contractor shall, at such time and in such form as AHA may require, furnish reports concerning the status of services required under this Agreement.

20. RECORDS:

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by AHA that relate to the performance of services under this Agreement.

Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of AHA or its designees to such books and records at proper times; and gives AHA the right to examine and audit same, and to make transcripts there from as necessary, and to allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

21. NOTICES:

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered, or certified, addressed as hereinafter provided.

All notices, demands, requests or approvals from Contractor to AHA shall be addressed to

AHA at:

Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda CA 94501-2161
Attention: [REDACTED]

All notices, demands, requests, or approvals from AHA to Contractor shall be addressed to Contractor at:

[REDACTED]
[REDACTED]
[REDACTED]
Attention: [REDACTED]

22. **NO SMOKING. DRINKING OR RADIO USE:**

Contractor agrees and acknowledges that smoking of tobacco products, drinking alcoholic beverages, and listening to radios is prohibited at any AHA site, including individual units, common areas, and every building and adjoining grounds. Contractor shall ensure that his/her employees and suppliers comply with these prohibitions.

23. **TERMINATION:**

In the event Contractor hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Contractor from AHA of written notice of default, specifying the nature of such default and the steps necessary to cure such default, AHA may terminate the Agreement forthwith by giving to the Contractor written notice thereof. Contractor will not be held responsible for failure to perform in the event such failure is due to delay caused by AHA. The AHA shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

24. **COMPLIANCES:**

Contractor shall comply with all state and federal laws, all City of Alameda ordinances, and all rules and regulations enacted or issued by AHA. In the event that the Contractor encounters a potential conflict between state, federal or local law, Contractor shall inform AHA and AHA shall direct Contractor on proper course of action.

25. **GOVERNING LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.)

Any suits brought pursuant to this Agreement shall be filed with the Courts of the County of Alameda, the State of California.

26. **ADVERTISEMENT:**

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters, or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from AHA to do otherwise.

27. **CONFIDENTIALITY:**

a. **DEFINITION:**

Confidential Information, as used in this Agreement, shall mean any AHA Client data.

b. **NONDISCLOSURE AND NONUSE:**

Contractor agrees that it will not use, disseminate, or in any way disclose any Confidential Information to any person, firm or business, except that Contractor may use

Confidential Information to the extent necessary to perform its obligations under this Agreement. Contractor agrees that it shall treat all Confidential Information with the same degree of care as the Contractor accords to its own Confidential Information, but in no case less than reasonable care. Contractor agrees that it shall disclose Confidential Information only to those of its employees who need to know such information, and the Contractor certifies that such employees have previously agreed, as a condition of employment, to be bound by terms and conditions applicable to Contractor under this Agreement. Contractor shall immediately give notice to AHA of any unauthorized use or disclosure of Confidential Information.

c. **EXCLUSIONS FROM NONDISCLOSURE AND NONUSE OBLIGATIONS:**

The obligations under 23B ("Nondisclosure and Nonuse Obligation") shall not apply to such portion that Contractor can document was i) in the public domain at the time such portion was disclosed or used, or ii) was disclosed in response to a valid court order.

d. **OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION AND OTHER MATERIALS:**

Confidential Information shall remain the property of the AHA. At AHA's request and no later than five (5) business days after such request, Contractor shall promptly destroy or deliver to AHA, at AHA's option, i) all materials furnished to Contractor, ii) all tangible media of expression in Contractor's possession or control to the extent that such tangible media incorporate any of the Confidential Information, and iii) written certification of the Contractor's compliance with such obligations under this sentence.

28. **WAIVER:**

A waiver by AHA of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

29. **INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both AHA and Contractor.

30. **ADDITIONAL FEDERAL REQUIREMENTS:**

a. Whereas the work or services herein may be subject to applicable Federal, State, and local laws and regulations, including but not limited to the regulations pertaining to the Community Development Block Grant program (24 CFR Part 570) and the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200). Consultant, contractors, its sub-contractors, consultants, and sub-consultants shall comply with, and are subject to, all applicable requirements as follows:

b. Equal Employment Opportunity - Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60): The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor shall ensure that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin. The contractor shall take affirmative action to ensure that applicants are employed and the employees are treated during employment, without regard to their race color, religion, sex, or national origin. Such actions shall include, but are not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

c. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c): All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and

subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the U.S. Department of Housing and Urban Development, (HUD).

d. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7): When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Davis-Bacon Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. If the contracted services fall under the definition of a Public Works project by the California Department of Industrial Relations (DIR), the contractor will be required to pay employees according to the prevailing wages set forth by the DIR and follow all applicable mandated reporting. The recipient shall report all suspected or reported violations to HUD.

e. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333): Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Contract Work Hours and Safety Standards Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

f. Rights to Inventions Made Under a Contract or Agreement: Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by HUD.

g. Rights to Data and Copyrights: Consultants and contractors shall comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part 27.4, Federal Acquisition Regulations (FAR).

h. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended: Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

j. Debarment and Suspension (Executive Orders (E.O.s) 12549 and 12689): No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 33. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

k. Drug-Free Workplace Requirements: The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient shall certify that it will comply with drug-free workplace requirements in accordance with the Drug-Free Workplace Act and with HUD's rules at 24 CFR part 24, subpart F.

l. Access to Records and Records Retention: Consultant, and any sub-consultants or sub-contractors, shall allow all duly authorized Federal, State, and/or AHA officials or authorized representatives access to the work area, as well as all books, documents, materials, papers, and records of Consultant, and any sub-consultants or sub-contractors, that are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions. The Consultant, and any sub-consultants or sub-contractors, further agree to maintain and keep such books, documents, materials, papers, and records, on a current basis, recording all transactions pertaining to this Agreement in a form in accordance with generally acceptable accounting principles. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records, and supporting detail shall be retained for a period of at least four (4) years after the expiration of the term of this Agreement.

m. Federal Employee Benefit Clause: No member of or delegate to the congress of the United States, and no resident commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

n. Energy Efficiency: Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871).

31. NONLIABILITY OF AHA OFFICIALS AND EMPLOYEES.

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

32. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

33. EXHIBITS:

The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit A – Scope of Services

Exhibit B – Fee Schedule

Exhibit C – Insurance requirements for Contractors

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

"CONTRACTOR"

[INSERT NAME, a]

By:

Name:

Its:

"AHA"

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

By: _____
Vanessa Cooper, Executive Director

SAMPLE

**EXHIBIT A
SCOPE OF WORK**

The Housing Authority of the City of Alameda requires services to:

SAMPLE

**EXHIBIT B
FEE SCHEDULE**

HOUSING AUTHORITY OF THE CITY OF ALAMEDA (AHA)

PROJECT:

| PROPERTY | Proposal amount Year 1 | % increase Year2 | % increase Year 3 | % increase Year4 | % increase Year 5 |
|-----------------|-----------------------------------|-----------------------------|------------------------------|-----------------------------|------------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

SAMPLE

EXHIBIT C
INSURANCE REQUIREMENTS FOR CONTRACTORS

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. For Contractors interacting with the public or with tenants, coverage must include coverage for discrimination, harassment, and fair housing claims under DFEH and HUD.
- **Automobile Liability:** ISO Form Number CA 00 01 coverage any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9) with limit no less than \$1 million for bodily injury and property damage. This requirement does not apply if no motor vehicles are used in providing services under the contract.
- **Workers' Compensation,** as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. This requirement does not apply to sole proprietors.

OTHER INSURANCE REQUIREMENTS:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- **Additional Insured Status:** : The Housing Authority of the City of Alameda and its affiliates, Alameda Affordable Housing Corporation and Island City Development and its Subsidiaries, and their departments, their respective directors, officers, Boards of Commissioners, employees, designated volunteers, elected or appointed officials, (AHA), are to be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.
- **Primary Coverage:** For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects AHA, its officers, officials, Board of Commissioners, employees, and volunteers. Any insurance or self-insurance maintained by AHA, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it.
- **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 days' notice to AHA.
- **Self-Insured Retentions:** Self-insured retentions must be declared and approved by AHA. AHA may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or AHA.
- **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to AHA.
- **Verification of Coverage:** Contractor shall furnish AHA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required

documents prior to the work beginning shall not waive the Contractor's obligation to provide them. AHA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- **Subcontractors:** Contractor shall pass down the insurance obligations contained herein to all tiers of subcontractors working under the contract.
- **Notification of claims:** The Proposer agrees to notify AHA in writing of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of the contract as soon as practicable, but no later than three (3) business days after their first knowledge of such claim or event.
- **Special Risks or Circumstance:** AHA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.

SAMPLE