



## ISLAND CITY DEVELOPMENT AGENDA

### **AGENDA**                    **REGULAR MEETING OF ISLAND CITY DEVELOPMENT**

**DATE & TIME**            **Wednesday, June 26, 2024 - 6:02 PM**

### **LOCATION**

Independence Plaza, 703 Atlantic Avenue, Alameda, CA 94501 - Ruth Rambeau Memorial Community Room

### **PUBLIC PARTICIPATION**

Public access to this meeting is available as follows:

Join Zoom Meeting

<https://us06web.zoom.us/j/83030077310?pwd=fv5xIYAEFr5k4f7GI6KQMDOK4vRw4g.1>

Meeting ID: 830 3007 7310

Passcode: 790402

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

- Send an email with your comment(s) to [sraskin@alamedahsg.org](mailto:sraskin@alamedahsg.org) prior to or during the Board of Directors meeting
- Call and leave a message at (510) 571-1700.

When addressing the Board, on agenda items or business introduced by Directors, 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 Island City Development Board of Directors, please contact (510) 747-4325 (voice), TTY/TRS: 711, or [sraskin@alamedahsg.org](mailto:sraskin@alamedahsg.org). Notification 48 hours prior to the meeting will enable the Island City Development Board of Directors to make reasonable arrangements to ensure accessibility or language assistance.

1. CALL TO ORDER & ROLL CALL
2. AB2449 COMPLIANCE - The Chair will confirm that there are 2 members in the same, properly noticed meeting room within the jurisdiction of the City of Alameda. Each board member who is accessing the meeting remotely must disclose verbally whether they are able to be remote under AB2449: (1) just



cause (max. 2 per year), or (2) emergency circumstances.” For Emergency Circumstances, the request must be approved by a majority vote of the Board of Directors for the emergency circumstances to be used as a justification to participate remotely. Remote Directors must provide a general description of the circumstances relating to need to appear remotely at the given meeting. Directors must also publicly disclose at the meeting, prior to any action, whether any other individuals 18 years or older are present in the room with the member at the remote location, and the general nature of the member’s relationship with such individuals. Note: A Director cannot participate in meetings of the Board of Directors solely by teleconference from a remote location for a period of more than 3 consecutive months or 20% of the regular meetings for ICD within a calendar year, or more than 2 meetings if the Board of Directors regularly meets fewer than 10 times per calendar year.

3. PUBLIC COMMENT (Non-Agenda)
4. CONSENT CALENDAR (Action)
  - A. Approve Minutes of the Special Board of Directors Meeting held on May 13, 2024.
  - B. Accept the Monthly Construction Report for The Estuary I.
  - C. Accept the Monthly Construction Report for Linnet Corner.
  - D. Accept the Quarterly LIHTC Portfolio Asset Management Fiscal Year-to-Date Financial Report through March 30, 2024.
  - E. Ratify the legal services contracts between Gubb and Barshay LLP and each of the limited partnerships for the three proposed projects at North Housing Block A.
  - F. Ratify a Consultant Services Agreement Not to Exceed \$2,309,519.07 between the Housing Authority of the City of Alameda and Lakehurst and Mosley LP and Ratify a Consultant Services Agreement Not to Exceed \$5,439,696.14 between the Housing Authority of the City of Alameda and Mabuhay and Lakehurst LP for North Housing Block A Master Development Work.
5. NEW BUSINESS
6. NON-AGENDA (Public Comment)
7. WRITTEN COMMUNICATIONS
8. ORAL COMMUNICATIONS – BOARD MEMBERS AND STAFF
9. ADJOURNMENT

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NOTES:

- If you need special assistance to participate in the meetings of the Island City Development Board of Directors, please contact Sarah Raskin at (510) 747-4360



(TTY/TRS: 711) or [sraskin@alamedahsg.org](mailto:sraskin@alamedahsg.org). Notification 48 hours prior to the meeting will enable the Island City Development Board of Directors to make reasonable arrangements to ensure accessibility or language assistance.

- Documents related to this agenda are available for public inspection and copying at the Office of the Housing Authority, 701 Atlantic Avenue, during normal business hours.
- 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 Directors 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 Island City Development'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 Island City Development accommodate these individuals.

**IF YOU WISH TO ADDRESS THE BOARD:**

- Anyone wishing to address the Board on agenda items or business introduced by Board members may speak for a maximum of three (3) minutes per agenda item when the subject is before the Board. Please file a speaker's slip with the Board President. Upon recognition by the President, approach the rostrum and state your name.
- Lengthy testimony should be submitted in writing and only a summary of pertinent points presented verbally.
- Applause and demonstrations are prohibited during Board meetings.





**Minutes – Draft until approved**

Island City Development  
Special Meeting, May 13, 2024  
In person at Independence Plaza Community Room, 703  
Atlantic Avenue, Alameda CA 94501, and Teleconference  
via Zoom

1. CALL TO ORDER & ROLL CALL

*Director Cooper called the meeting to order at 12:02 PM. The following Board members were present: Director Vanessa Cooper and Director Greg Kats. Director Carly Grob was absent; quorum established. Staff in attendance: Sarah Raskin, Jenny Wong, Stephen Zhou, Jocelyn Layte, Alicia Southern, Nancy Gerardin, Trevor Jones, Jie Liang, Louie So, and Joseph Nagel.*

2. PUBLIC COMMENT (Non-Agenda) **NONE**

3. AB2449 COMPLIANCE - The Chair will confirm that there are 2 members in the same, properly noticed meeting room within the jurisdiction of the City of Alameda. Each board member who is accessing the meeting remotely must disclose verbally whether they are able to be remote under AB2449: (1) just cause (max. 2 per year), or (2) emergency circumstances." For Emergency Circumstances, the request must be approved by a majority vote of the Board of Directors for the emergency circumstances to be used as a justification to participate remotely. Remote Directors must provide a general description of the circumstances relating to need to appear remotely at the given meeting. Directors must also publicly disclose at the meeting, prior to any action, whether any other individuals 18 years or older are present in the room with the member at the remote location, and the general nature of the member's relationship with such individuals. Note: A Director cannot participate in meetings of the Board of Directors solely by teleconference from a remote location for a period of more than 3 consecutive months or 20% of the regular meetings for ICD within a calendar year, or more than 2 meetings if the Board of Directors regularly meets fewer than 10 times per calendar year.

4. CONSENT CALENDAR (Action)

- A. Approve Minutes of the Special ICD Meeting held on April 17, 2024.
- B. Accept the Monthly Construction Report for the Estuary I.
- C. Accept the Monthly Construction Report for Linnet Corner.
- D. Accept the Quarterly Overview Report for the Housing Development Department.
- E. Accept the Quarterly Development Report for The Estuary II.
- F. Accept the Quarterly Development Report for The Poplar (2615 Eagle Avenue).



- G. Approve the Amended and Restated Articles of Incorporation of Island City Development.
- H. Approve the Quarterly Write-off to March 31, 2024 of Uncollectible Accounts Receivable from Former Residents.
- I. Ratify Contract Amendment No. 1 Not to Exceed \$790,873 with HKIT Architects for Linnet Corner, Ratify Contract Amendment No. 1 Not to Exceed \$788,831 with HKIT Architects for Estuary I.

*No Comments. Director Kats motioned to accept consent calendar items 4A – 4I, Director Cooper seconded. A call for all in favor, the motion passed.*

5. NEW BUSINESS

- A. President to Appoint a new ICD Board member for a two-year term starting May 15, 2024.

*Director Cooper thanked Director Kats for his service on the ICD Board and announced that Alicia Southern, Director of Human Resources, will be replacing Director Kats as the Secretary of the ICD Board for a two-year term starting May 15, 2024.*

*Staff J. Wong thanked Director Kats on behalf of the Housing Development department for his efforts with the North Housing project and expressed the department's excitement for working with the new member of the ICD Board.*

*Director Kats moved to appoint a new ICD Board member, and Director Cooper seconded. The motion passed.*

6. NON-AGENDA (Public Comment) **NONE**

7. WRITTEN COMMUNICATIONS **NONE**

8. ORAL COMMUNICATIONS – BOARD MEMBERS AND STAFF

*Director Cooper thanked staff for their hard work in putting together the North Housing Construction Start Celebration Event on April 24, 2024.*

9. ADJOURNMENT

*Director Cooper adjourned the meeting at 12:07 PM.*





**ISLAND CITY DEVELOPMENT**

Fax (510) 522-7848 | TTY/TRS 711

To: Board of Directors  
Island City Development

From: Jenny Wong, Senior Project Manager

Date: June 26, 2024

Re: Accept the Monthly Construction Report for The Estuary I.

**BACKGROUND**

The Housing 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 Estuary I project is located at 500 Mosley Avenue. ICD is the developer. The project scope includes 45 new permanent supportive housing units for homeless or formerly homeless individuals and/or households, including one manager’s unit. Amenities include property management offices, social service coordination offices, a community room, mail room, central laundry, central courtyard, and secure bike parking. J.H. Fitzmaurice, Inc. (JHF) initiated construction on January 30, 2024 and is scheduled to achieve completion on or before August 1, 2025.

Please see previous monthly Board Reports for project details prior to this month’s update.

**DISCUSSION**

Construction

The overall project completion and billing percentage, through May 31, 2024, is approximately 22%. Rough framing of the third floor is complete. Structural framing including shear wall installation and exterior sheathing are complete on the first and second floors. Rough plumbing is completed on the first floor. Rough electrical and fire sprinkler system progress were made on the first floor. Excavation and installation of underground utilities at the courtyard and Lakehurst Circle were completed. CCTV cameras for site security have been installed and a live guard is patrolling the site after hours and weekends to provide additional security at the site as JHF continues to make good construction progress. Currently, the project is on-track to complete on time. This month’s construction activities include rough plumbing on the second and third floors, water line installation on the first and second floors, continue rough electrical and fire sprinkler system on the second floor, complete shear walls on the third floor, begin prepping for drywall in the community area, continue subfloor and rough framing through the fourth floor, start roofing, and waterproofing of the mockup window installation.



There are no approved change orders this month. To date, the project has utilized approximately 2.62% of its hard cost contingency, in line with its completion percentage. Staff is exploring opportunities for owner upgrades to improve the resident experience and sustainability, durability, and maintenance of the future building. Owner contingency funds are held separately from the contract and when change orders are approved, the original construction contract value is increased.

Operation and Lease Up Activities

Staff and property management will begin meeting monthly to prepare a pre-lease up plan by August 2024.

**FISCAL IMPACT**

AHA and ICD have completion and lease-up guarantees on this development. The construction is on time and on budget. Operations and lease-up planning activities are meeting project milestones. See attachment for the monthly budget update.

**CEQA**

Not Applicable.

**RECOMMENDATION**

Accept the Monthly Construction Report for The Estuary I.

**ATTACHMENTS**

1. Att1\_The Estuary I Budget Tracking Through May 2024
2. Att2\_The Estuary I Progress Photos

Respectfully submitted,



Jenny Wong, Senior Project Manager

**The Estuary I**  
**Monthly Update - as of May 31, 2024**

<b>Total Development Costs to Date</b>				
	\$ Budget	\$ Disbursed	% Disbursed	\$ Balance
Land & Holding Costs	\$2,461,115.00	\$2,444,509.90	99%	\$16,605.10
Hard Costs	\$27,175,842.52	\$6,276,583.99	23%	\$20,899,258.53
Soft Costs	\$13,286,926.48	\$2,505,401.92	19%	\$10,781,524.56
<b>Total</b>	<b>\$42,923,884.00</b>	<b>\$11,226,495.81</b>	<b>26%</b>	<b>\$31,697,388.19</b>

<b>General Contract Status</b>	
Total Contract Value	\$24,898,006.72
Change Orders	\$32,299.55
Revised Contract Value	\$24,930,306.27
Value of Work Completed to Date	\$5,493,596.97
Retention Withheld	\$497,989.97
Amount Paid to Date	\$4,995,607.00
Balance to Finish	\$19,934,699.27
% Construction Complete	22.06%

<b>Contingency Utilization</b>		
	Hard Cost	Soft Costs
Total Contingency Approved	\$1,394,525.00	\$250,000.00
Approved Change Orders to Date	\$32,299.55	\$0.00
Remaining Balance of Contingency	\$1,362,225.45	\$250,000.00
% of Contingency Used	2.32%	0.00%



## The Estuary I Progress Photos



Aerial photo of the North Housing Block A site. The Estuary I is located on the top left corner.



Framing progress photo from the eastern elevation.





Plumbing lines, water lines, and fire sprinkler system being installed in the hallway.





**ISLAND CITY DEVELOPMENT**

Fax (510) 522-7848 | TTY/TRS 711

To: Board of Directors  
Island City Development

From: Paris Howze, Project Manager

Date: June 26, 2024

Re: Accept the Monthly Construction Report for Linnet Corner.

**BACKGROUND**

The Housing 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.

Linnet Corner is located at 2000 Lakehurst Circle, Alameda, CA 94501. The project is the new construction of a single, four (4) story residential building, with 64 units. There will be 40 studio units and 23 one-bedroom units targeting seniors aged 62 and over. There will also be one two-bedroom dedicated as a manager’s unit. Affordability levels will range between 30% and 40% of the Area Median Income (AMI). The project will also have 25% or 16 units serving formerly homeless/homeless senior veterans. Amenities will include a community room, onsite property management and service provider offices, shared unassigned parking, a laundry room, a resident garden, and roof terrace.

Staff delivered a notice to proceed on March 6, 2024, and J.H. Fitzmaurice (J.H.F), Inc. commenced construction activities on March 14, 2024. The project is expected to achieve completion on or before October 30, 2025.

Please see previous Board reports for project details prior to this month’s update.

**DISCUSSION**

**Construction**

The overall project completion and billing percentage, through May 31, 2024 is approximately 14%. This month’s construction activities included framing of the first and second floors, framing of the stairs, installing first and second floor plumbing lines, installing joists and beams, and installing HVAC layouts.

There are no approved change orders for the month of May. To date, the project has utilized approximately zero percent of its hard cost contingency, in line with its completion percentage. Owner contingency funds are held separately from the contract and when change orders are approved, the original construction contract value is amended accordingly.



Operation and Lease-Up Activities

Project staff will be working with cross-agency departments and external partners to prepare the project for leasing in 2025.

**FISCAL IMPACT**

AHA and ICD have completion and lease up guarantees on this development. To date, the construction is on time and on budget.

**CEQA**

Not applicable.

**RECOMMENDATION**

Accept the Monthly Construction Report for Linnet Corner.

**ATTACHMENTS**

1. Linnet Corner - Monthly Budget Tracking (May 2024)
2. Linnet Corner - Monthly Progress Photos (May 2024)

Respectfully submitted,



Paris Howze, Project Manager

**Linnet Corner**  
**Monthly Update - as of May 31, 2024**

<b>Total Development Costs to Date</b>				
	\$ Budget	\$ Disbursed	% Disbursed	\$ Balance
Land & Holding Costs	\$640,864	\$526,160	82%	\$114,704
Hard Costs	\$36,513,061	\$2,981,194	8%	\$33,531,867
Soft Costs	\$16,118,331	\$2,731,377	17%	\$13,386,954
<b>Total</b>	<b>\$53,272,256</b>	<b>\$6,238,730</b>	<b>12%</b>	<b>\$47,033,526</b>

<b>General Contract Status</b>	
Total Contract Value	\$29,561,507
Change Orders	(\$170)
Revised Contract Value	\$29,561,336
Value of Work Completed to Date	\$4,035,524
Retention Withheld	\$343,721
Amount Paid to Date	\$3,691,803
Balance to Finish	\$25,869,533
% Construction Complete	14%

<b>Contingency Utilization</b>		
	Hard Cost	Soft Costs
Total Contingency Approved	\$1,738,717	\$450,000
Approved Change Orders to Date	(\$170)	\$0
Remaining Balance of Contingency	\$1,738,887	\$450,000
% of Contingency Used	0%	0%

Linnet Corner  
Progress Photos  
(May 31, 2024)



*Figure 1: Walls going up at Level 2*

Linnet Corner  
Progress Photos  
(May 31, 2024)



*Figure 2: Subfloor Installation at Level 2*

Linnet Corner  
Progress Photos  
(May 31, 2024)



*Figure 3: View from PSH I*



Linnet Corner  
Progress Photos  
(May 31, 2024)



*Figure 4: Joist installation at units*



# ISLAND CITY DEVELOPMENT

Fax (510) 522-7848 | TTY/TRS 711

To: Board of Directors  
Island City Development

From: Trevor Jones, Asset Manager

Date: June 26, 2024

Re: Accept the Quarterly LIHTC Portfolio Asset Management Fiscal Year-to-Date Financial Report through March 30, 2024.

## **BACKGROUND**

The portfolio includes eight Low Income Housing Tax Credit (LIHTC) Partnership properties: Breakers at Bayport, Shinsei Gardens, Park Alameda, Jack Capon Villa, Littlejohn Commons, Stargell Commons, Rosefield Village, and Everett Commons. The projects were placed in service between 2006 and 2022 with a cumulative unit count of 347 units (85.5% family, 9% senior, and 5.5% for persons with disabilities), of which, 41% of the units are supported by a combination of various rental subsidy programs (Project-Based Voucher and Veterans Affairs Supportive Housing Project-Based Voucher).

The Housing Authority of the City of Alameda (AHA) owns all the land except for Park Alameda; thus, all partnerships include a land lease, and AHA's role varies from Co-General Partner (Co-GP), General Partner (GP), to Special Limited Partner (SLP). Island City Development (ICD) is the developer for Rosefield Village, Littlejohn Commons, and Everett Commons and co-developer for Stargell Commons.

## **DISCUSSION**

This memo provides an overview of the Low-Income Housing Tax Credit (LIHTC) partnership properties' Year-to-Date financial report through March 31, 2024. These properties run on a fiscal year ending December 31st. This report tracks performance per the budget and includes achievements, items of note, and upcoming events or changes. Please note the figures used in this report may change and not match the audit.

Statements that apply to all properties:

- Operating Revenue- Includes tenant rent, rental subsidy, vacancy loss, laundry income, and interest on accounts. This is accounted for on a cash basis.
- Tenant Receivables- Property Management and Resident Services assist residents with applying for assistance and repayment agreements.
- Operating Expense- Includes marketing, administrative, property management fees, salaries and benefits, utilities, operating and maintenance, taxes and insurance, and resident services. This is accounted for on an accrual basis.
- Net Operating Income (NOI) Operating Revenue minus Operating Expense



- Debt Service Coverage Ratio will be denoted by DSCR. DSCR is calculated by dividing (NOI-Operating Expenses-Replacement Reserves) divided by Debt Service.
- Total Surplus Cash Flow will be distributed per the waterfall in accordance with the LPA, lender, and regulatory agreements.
- Conservice is a utility management provider that will be employing at select properties in Q2 2024.

### Breakers at Bayport- 459 Neptune Gardens Avenue

Breakers at Bayport is a 52-unit Low Income Housing Tax Credit (LIHTC) development for families. Resources for Community Development (RCD) is the General Partner (GP) and The Breakers at Bayport L.P. is the Limited Partner (LP). The Housing Authority of the City of Alameda (AHA) owns the land. The Housing Authority of the City of Alameda (AHA) provided an original loan of \$2,015,000 and has a current balance of \$1,408,790, that bears no interest and matures in January 2059. John Stewart Company (JSCo) provides property management services. Operation Dignity provides resident services. The project was placed in service on March 29, 2006.

Unit matrix: 2Bed- 34 units, 3Bed- 18 units (1 Manager Unit)

Section 8 PBV: 15 units

Income and rent limits: 50%-60% AMI

- Operating Revenue is \$289,287, which is 2% (\$6,828) lower than budget.
- Occupancy is 98% (averaged 1.45 vacant units over the Quarter). As of March 31st there was 1 vacant unit.
- Tenant Revenue is \$157,216 and Subsidy Revenue is \$138,321.
- Tenant Accounts Receivable are \$36,664 No tenants are currently facing termination for nonpayment. This includes residents with balances over 6 months delinquent.
- Operating Expenses are \$161,627, which is 6% (\$8,756) higher than budget due to collection loss being coded as an expense. \$9,998 was written off in Q1.
- Net Operating Income is \$127,660, which is 11% (\$15,584) lower than budget due to RCD rolling out a new Accounts Receivable plan.
- Replacement Reserve deposit requirement is \$15,500 annually.
- Mandatory hard debt service is \$139,152 annually.
- Total Net Cash Flow is \$88,997, which is \$15,584 under budget.
- DSCR is 3.56x.
- Asset Management Fee of \$3,460 is paid annually to AHA.

### Shinsei Gardens- 401 Willie Stargell Avenue

Shinsei Gardens is a 39-unit Low Income Housing Tax Credit (LIHTC) development for families. RCD is the GP, Operation Dignity is the SLP, and National Equity Fund (NEF) is the LP. AHA owns the land, and also held an Option to exercise the Right of First Refusal (ROFR). AHA has closed on the investor Limited Partner buyout in March 2024. JSCo provides property management services. Operation Dignity provides resident services. There is a loan of \$2,129,336 from AHA/CIC that bears no interest and matures on March 23, 2063. The project was placed in service on September 03, 2009.



Unit matrix: 1Bed- 6 units, 2Bed- 18 units, 3Bed- 12 units (1 Manager Unit), 4Bed- 3 units  
Section 8 PBV: 21 units  
Income and rent limits: 20%-60% AMI

- Operating Revenue is \$243,888, which is 6% (\$16,815) lower than budget due to Occupancy being lower than budget.
- Occupancy averaged 95% (2> vacant units).
- Tenant Revenue is \$102,978 and Subsidy Revenue is \$150,741.
- Tenant Accounts receivable are \$1,288. No tenants are currently facing termination for non-payment.
- Operating Expenses are \$142,229, which is 3% (\$4,818) lower than budget due to low turnover and payroll being allocated correctly.
- Net Operating Income is \$101,659, which is 11% (\$11,997) lower than budget due to lower than budgeted occupancy and higher cost of labor
- Replacement Reserve deposit requirement is \$23,400 annually.
- No mandatory hard debt service.
- Total Net Cash Flow is \$95,809, which is \$11,997 under budget.
- DSCR is N/A due to no hard loans.

#### Park Alameda- 2428 Central Avenue

Park Alameda is a 62-unit Low Income Housing Tax Credit (LIHTC) development for families. RCD is the managing Co-GP, AHA is the Co-GP, and Union Bank (UB) is the LP. AHA holds an Option to exercise the Right of First Refusal (ROFR) in which can be executed on or after January 2025. AHA will be starting shortly on this and expects to make a similar arrangement as was done at Shinsei. RCD, the GP, owns both the land and the property. There is a loan of \$8,600,000 from AHA/CIC that bears no interest and matures September 2068. JSco provides property management services. Operation Dignity provides resident services. The project was placed in service on December 27, 2012.

Unit matrix: 0Bed- 61 units, 2Bed- 1 unit (manager unit)  
Section 8 PBV: 15 units  
Income and rent limits: 50%-120% AMI

- Operating Revenue is \$202,684, which is 6% (\$11,856) lower than budget as a result of occupancy and other income being under budget.
- Occupancy averaged 91% (6 Vacant Units) during Q1 and ended the Quarter with only 2 unrented units.
- Tenant Revenue \$127,795 and Subsidy Revenue are \$94,938.
- Tenant Accounts Receivable are \$126,745. No tenants are currently facing termination for nonpayment.
- Operating Expenses are \$179,355, which is 21% (\$30,566) higher than budget. The primary reasons for expenses being over budget are legal expenses and unplanned plumbing issues.
- Net Operating Income is \$23,329, which is 65% (\$42,422) lower than budget. However, we budgeted aggressively to get this project back on track and this Quarter does reflect significant improvements.



- Replacement Reserve deposit requirement \$31,932 annually.
- No Mandatory Hard Debt Service.
- Total Net Cash Flow is \$15,347.

### Stargell Commons- 2700 Bette Street

Stargell Commons is a 32-unit Low Income Housing Tax Credit (LIHTC) development for families. RCD is the GP, Wells Fargo Bank (WFB) is the LP, and ICD is the SLP. AHA owns the land and also provided a loan of \$2,000,000 at 3% interest payable through excess/distributable cash with a maturity date of December 2072. As of December 2023, no principal payments have been made and \$238,298 of interest has accrued. AHA holds an Option to exercise the Right of First Refusal (ROFR), which can be exercised on or after December 31, 2031. JSCo provides property management services. Operation Dignity provides resident services. The project was built in May 2017.

Unit matrix: 1Bed- 5 units, 2Bed- 17 units (1 Manager Unit), 3Bed- 10 units

Section 8 PBV: 7 units

Income and rent limits: 30%-60% AMI

- Operating Revenue is \$145,838, which is 7% (\$11,817) lower than budget as a result of higher vacancy.
- Occupancy averaged 91.5% (over 3 vacant units) over the Quarter. A number of residents chose to move-out instead of agreeing to a payment plan.
- Tenant Revenue is \$104,274 and Subsidy Revenue is \$53,973.
- Tenant Accounts Receivable are \$17,138. No tenants are currently facing termination for nonpayment.
- Operating Expenses are \$117,535, which is 14% (13,990) higher than budget due to higher than anticipated move-outs during the Quarter.
- Net Operating Income is \$28,303 which is 48% (\$25,807) lower than budget due to higher than anticipated turnover.
- Replacement Reserve deposit requirement is \$19,200 annually.
- Mandatory hard debt service is \$69,156 annually.
- Total Net Cash Flow is \$6,214.
- DSCR is 1.36.

### Jack Capon Villa- 2216 Lincoln Avenue

Jack Capon Villa is a 19-unit Low Income Housing Tax Credit (LIHTC) development for persons with developmental disabilities. Satellite Affordable Housing Associates (SAHA) is the managing Co-GP, AHA is the Co-GP, and Bank of America (BoFA) is the LP. AHA owns the land and also holds an Option to exercise the Right of First Refusal (ROFR), which can be executed on or after December 31, 2028. AHA has 3 current loans secured by the property. The first loan was for \$225,000 with an interest rate of 5% and current balance of \$52,238 with a maturity of November 1, 2024. The second AHA/CIC loan was for \$1,400,000 with an interest rate of 3% and December 2023 balance of \$1,400,000 excluding accrued interest of \$331,285. The third AHA loan was for \$200,000 with an interest rate of 3% and deferred payments until 2070. SAHA Property Management provides property





management services. Housing Consortium of East Bay (HCEB) provides resident services. The project was placed in service on January 09, 2014.

Unit matrix: 1Bed- 16 units, 2Bed- 3 units (1 Manager Unit)

Section 8 PBV: 18 units

Income and rent limits: 50% AMI

- Operating Revenue is \$138,340 which is 18% (\$20,878) higher than budget due to the property being 100% occupied during the First Quarter.
- Occupancy averaged 100% (0 vacant units) over the First Quarter.
- Tenant Revenue is \$26,770 and Subsidy Revenue is \$99,980.
- Tenant Accounts Receivable are \$3,941.
- Operating Expenses are \$92,137, which is 8% (\$8,533) lower than budget due to conservative budgeting.
- Total Net Operating Income is \$46,203, which is 175% (\$29,411) higher than budget.
- Replacement Reserve deposit requirement is \$11,400 annually.
- Mandatory hard debt service is \$28,632 annually.
- DSCR is 6.47.
- Total Net Cash Flow is \$36,195.
- The property ended 2023 fully occupied and maintained 100% occupancy over the first Quarter. This allowed the property to save on expenses that would normally accompany turning units.

Littlejohn Commons- 1301 Buena Vista Avenue

Littlejohn Commons is a 31-unit Low Income Housing Tax Credit (LIHTC) development for seniors. ICD is the GP and NEF is the LP. ICD also holds an Option/ Right of First Refusal which can be executed on or after August 1, 2030. The Partnership entered a ground lease with the land owner, AHA, which expires December 31, 2115. FPI Management provides property management services. LifeSTEPS provides resident services. The project was placed in service on July 31, 2018.

Unit matrix: 1Bed- 30 units, 2Bed- 1 unit (manager's unit)

Section 8 PBV: 25 units

Income and rent limits: 30%-50% AMI

- Operating Revenue is \$160,106, which is 3% (\$5,331) lower than budget due to one eviction and one move-out in the first Quarter.
- Occupancy is 95% (2 vacant units) as of March 31st.
- Tenant Revenue is \$46,083 and Subsidy Revenue is \$133,549.
- Tenant Accounts receivable are \$59,297. Nonpayment is being actively addressed.
- Operating Expenses are \$83,097, which is 12% (10,999), lower than budget due to lower payroll as we hired two new office staff. It is anticipated some invoices from the first Quarter will be paid in April.
- Net Operating Income is \$77,009, which is 8% (\$5,668) higher than budget due to high occupancy and lower than budgeted expenses.
- Replacement Reserve deposit requirement is \$15,500 annually.



- Mandatory hard debt service is \$236,508 annually.
- Total Net Cash Flow is \$14,007.
- DSCR is 1.24 and will be monitored closely.

#### Everett Commons- 2437 Eagle Avenue

Everett Commons is a 20-unit Low Income Housing Tax Credit (LIHTC) development project for families. ICD is the GP and Enterprise is the LP. ICD also holds an Option to exercise the Right of First Refusal (ROFR) which can be executed on or after the end of the compliance period in 2033. The Partnership entered a ground lease with the land owner, AHA, which expires June 1, 2116. FPI Management provides property management services. LifeSTEPS provides resident services. The project was placed in service on December 17, 2018.

Unit matrix: 1Bed- 4 units, 2Bed- 11 units (1 Manager Unit), 3Bed- 5 units

Section 8 PBV: 12 units

VASH PBV: 5 units

Income and rent limits: 30%-60% AMI

- Operating Revenue is \$137,666, which is 4% (\$5,783) lower than budget.
- Occupancy is 95% (1 vacant unit) as of March 31st 2024 .
- Tenant Revenue is \$35,139 and Subsidy Revenue is \$110,150.
- Tenant Accounts Receivables are \$25,570 with \$13,509 occurring during the moratorium. Nonpayment is being actively addressed.
- Operating Expenses are \$69,287, which is 9% (7,104) lower than budget due to utilities not being paid timely. It is anticipated some of the First Quarter's expenses to be paid in April. This will largely be addressed with the introduction of Conserve.
- Net Operating Income is \$68,379, which is 2% (\$1,321) higher than budget due to strong and stabilized occupancy.
- Replacement Reserve deposit requirement is \$13,508 annually.
- Mandatory hard debt service is \$215,916.
- Total Net Cash Flow is \$11,023.- DSCR is 1.20. AHA will continue to monitor this property closely due to the low DSCR.

#### Rosefield Village – 727 Buena Vista Avenue

Rosefield Village is a 92-unit Low Income Housing Tax Credit (LIHTC) development project for families. ICD also holds an Option to exercise the Right of First Refusal (ROFR) which can be executed on or after the end of the compliance period in 2033. The Partnership entered a ground lease with the land owner, AHA, which expires December 31, 2115. FPI Management provides property management services . LifeSTEPS provides resident services. The project was placed in service in 2022. Please note 2024 is the first full year of operating so some numbers are skewed by the 2023 conversion to permanent financing.

Unit matrix: Studio- 8 units, 1Bed- 35 units, 2Bed- 26 units (1 Manager Unit), 3Bed- 23 units

Section 8 PBV: 23 units

Income and rent limits: 20%-80% AMI



- Operating Revenue is \$445,115, which is 3% (\$15,863) lower than budget.
- Occupancy averaged 88% (11 vacant units) over the First Quarter. Rosefield was affected significantly by the moratorium. While property management could not serve notices during the COVID Moratorium, residents let their delinquency build-up and many opted to move-out with large outstanding balances instead of going through the court process or working with LifeSTEPS. Staff have payment plans with those who are willing to work with LifeSTEPS and AHA. FPI and AHA are working hard to lease those units that vacated. Staff are holding weekly meetings with FPI. Leasing is ongoing and is expected to improve in 2024. As of March 31, 2024, there was 1 unrented vacant unit.
- Tenant Revenue is \$312,476 and Subsidy Revenue is \$166,736.
- Tenant Accounts receivable are \$259,831. Nonpayment is being actively addressed.
- Operating Expenses are \$255,385, which is 6% (13,745) higher than budget due to a number of invoices incurred in 2023 being paid in the First Quarter. It is anticipated more invoices being paid from past months in April as we stabilize staffing onsite.
- Net Operating Income is \$189,730, which is 13% (\$29,608) lower than budget due to increasing accounts receivable and lower occupancy.
- Replacement Reserve deposit requirement is \$55,200 annually.
- Mandatory hard debt service is \$724,692 annually.
- Total Net Cash Flow is (\$5,243).
- DSCR is 0.97. AHA will continue to monitor this property closely due to the low DSCR.

Overall, the portfolio is performing strongly and AHA has established watch lists with FPI and JSCO to address issues stemming from issues with tenant balances from the moratoriums put in place during the pandemic. As these moratoriums are peeled back, AHA is working creatively with LifeSTEPS, legal, and FPI to create payment plans and keep our units occupied and in good standing. All the assets are able to fulfill mandatory hard debt service and deposit reserves with a debt service coverage ratio averaging at 2.47, ranging from 0.97 to 6.47. Also, most assets produce surplus cash/ residual receipts for distribution. Reserve balances are attached.

### **FISCAL IMPACT**

None

### **CEQA**

N/A

### **RECOMMENDATION**

Accept the LIHTC Portfolio Asset Management Fiscal Year to Date Financial Report through the Month of March 2024.

### **ATTACHMENTS**

1. AHA LIHTC Q1 2024





2. LIHTC Q1 Quarterly Reports Final

Respectfully submitted,  
Trevor Jones  
Trevor Jones, Asset Manager



# LIHTC Q1 2024 REPORT

Income is on a Cash Basis

Expenses are on an Accrual Basis

Income Variance is calculated Actual-Budget

Expense Variance is calculated Actual-Budget

TREVOR JONES  
ASSET MANAGER

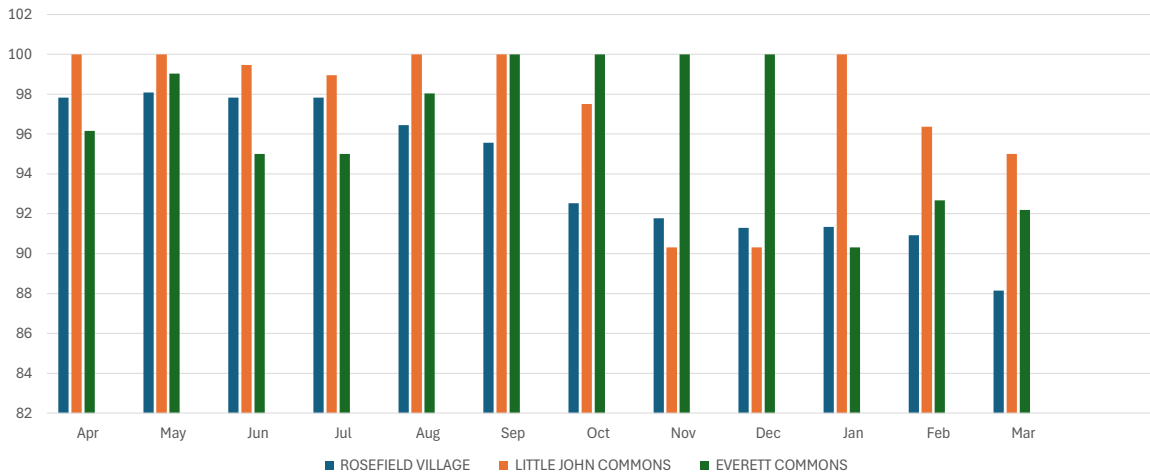


[www.alamedahsg.org](http://www.alamedahsg.org)



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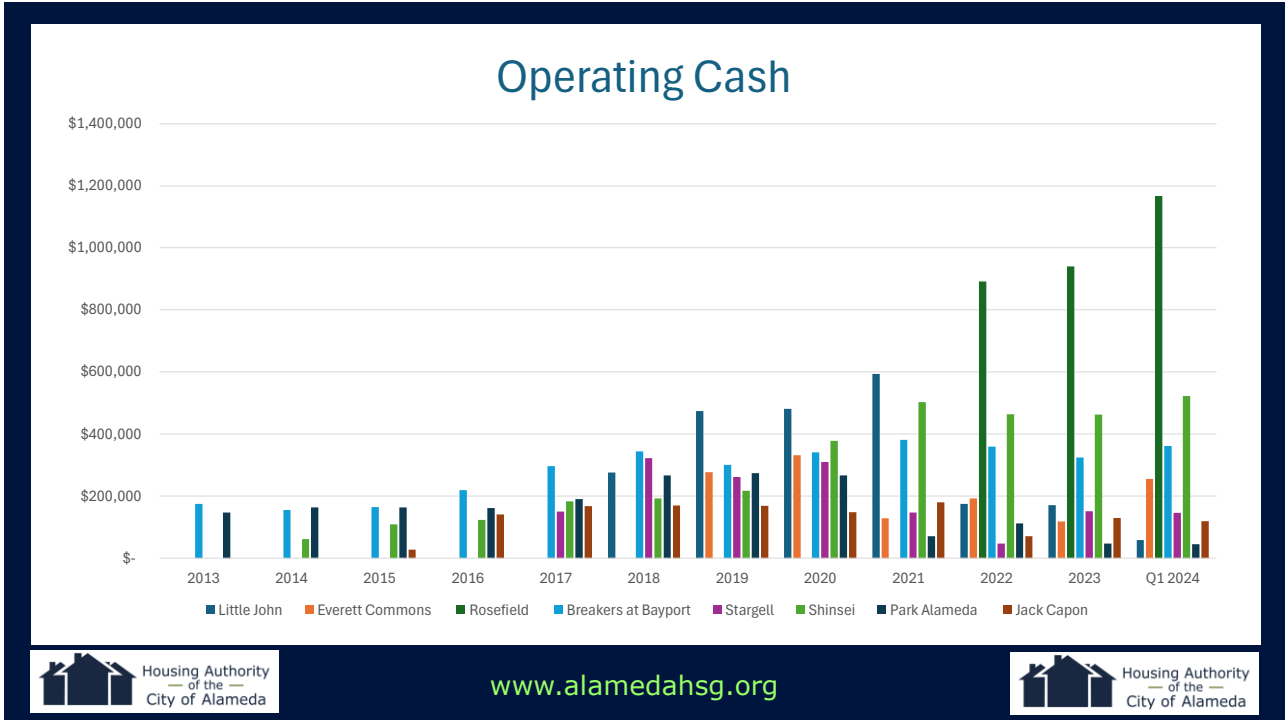
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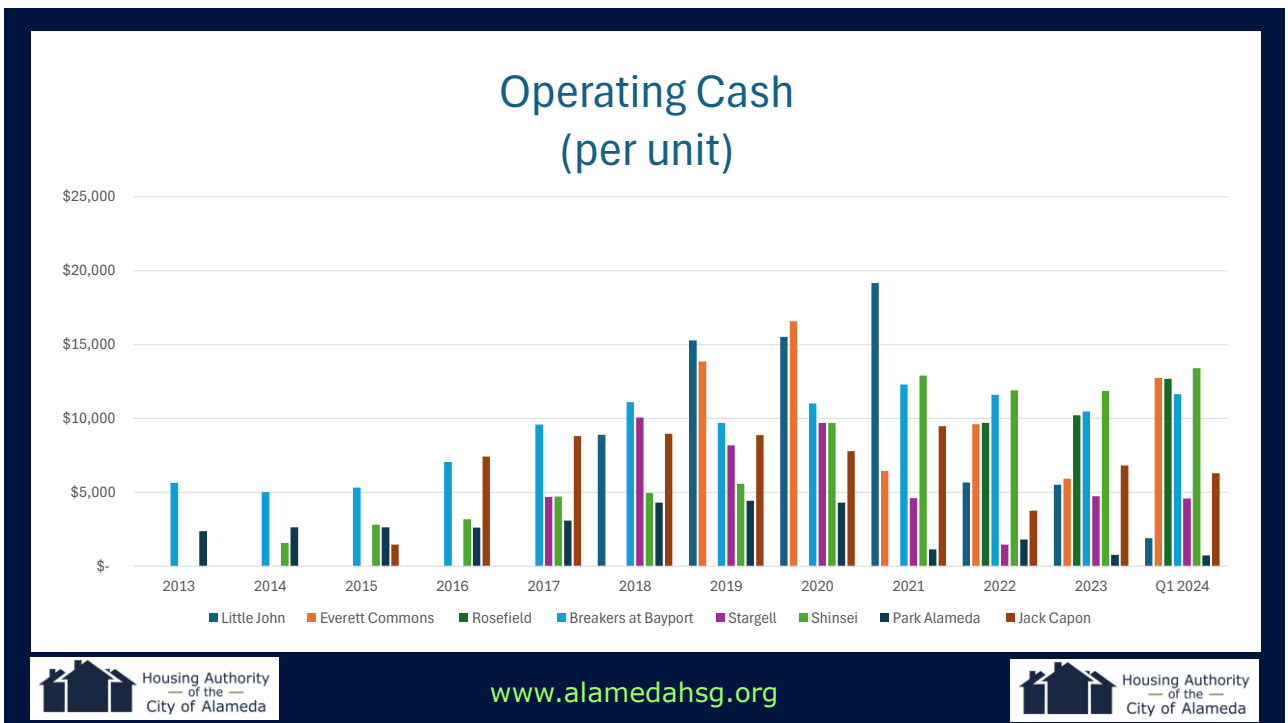
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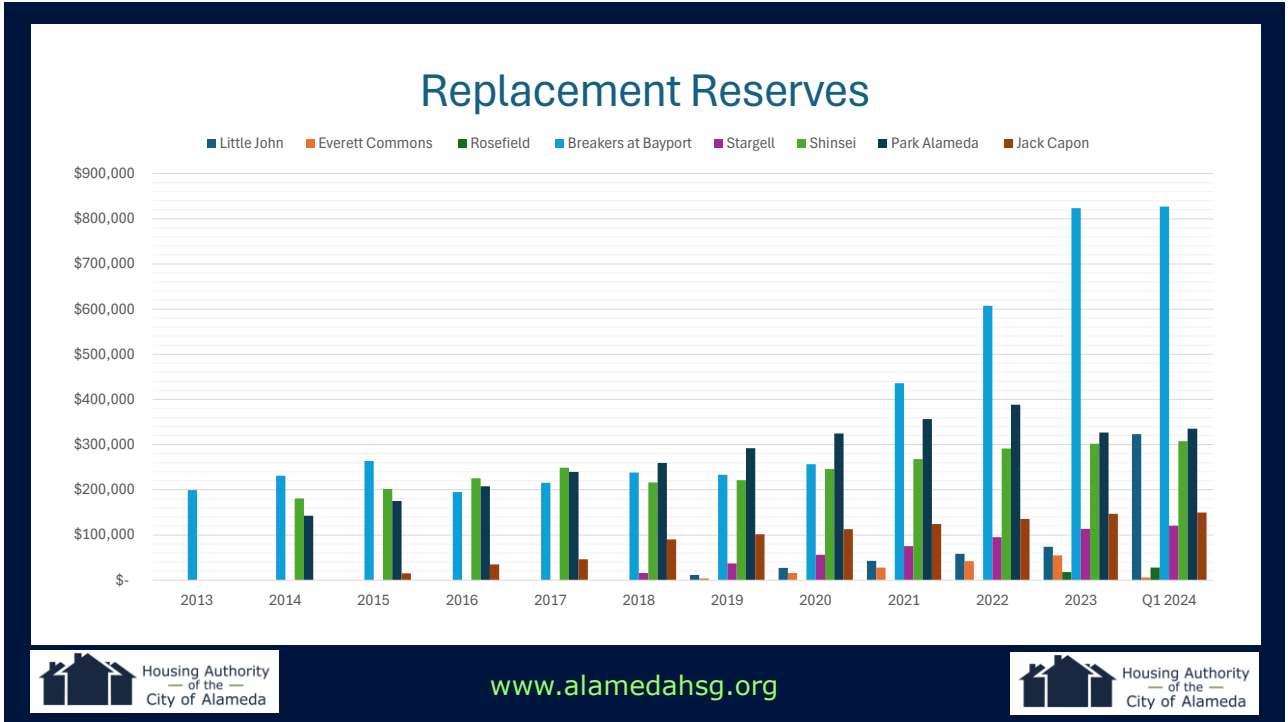
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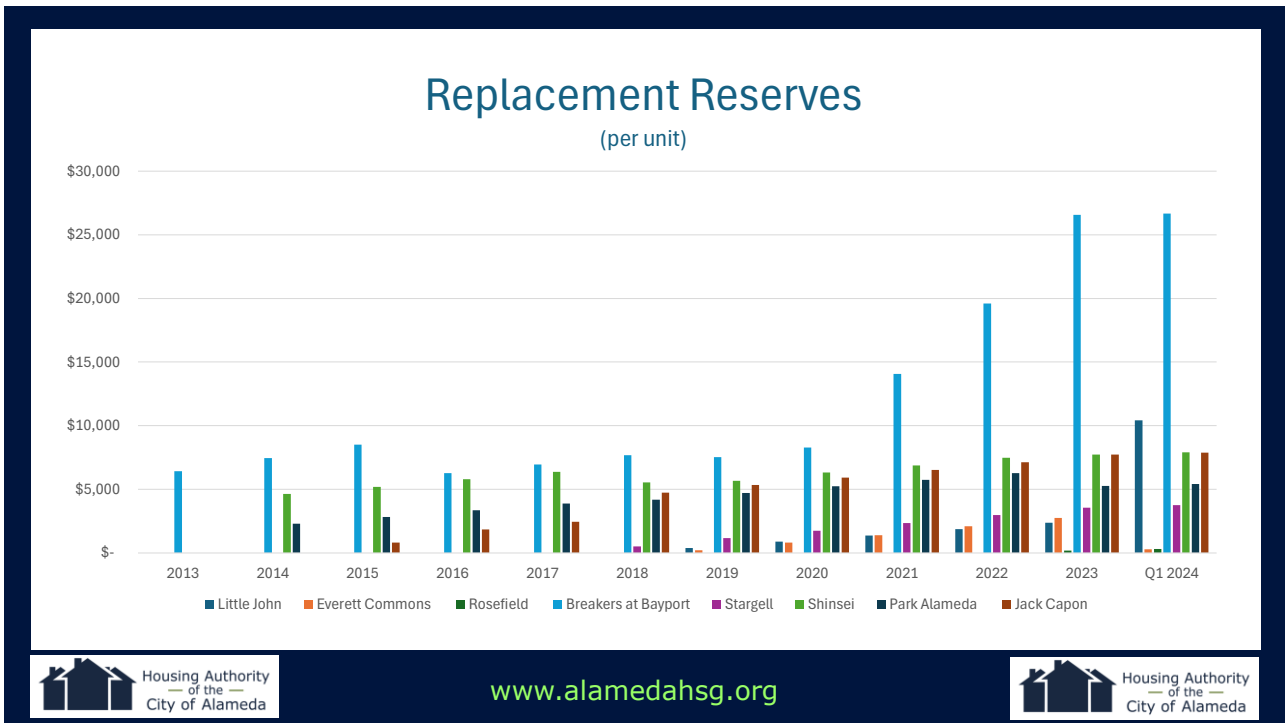
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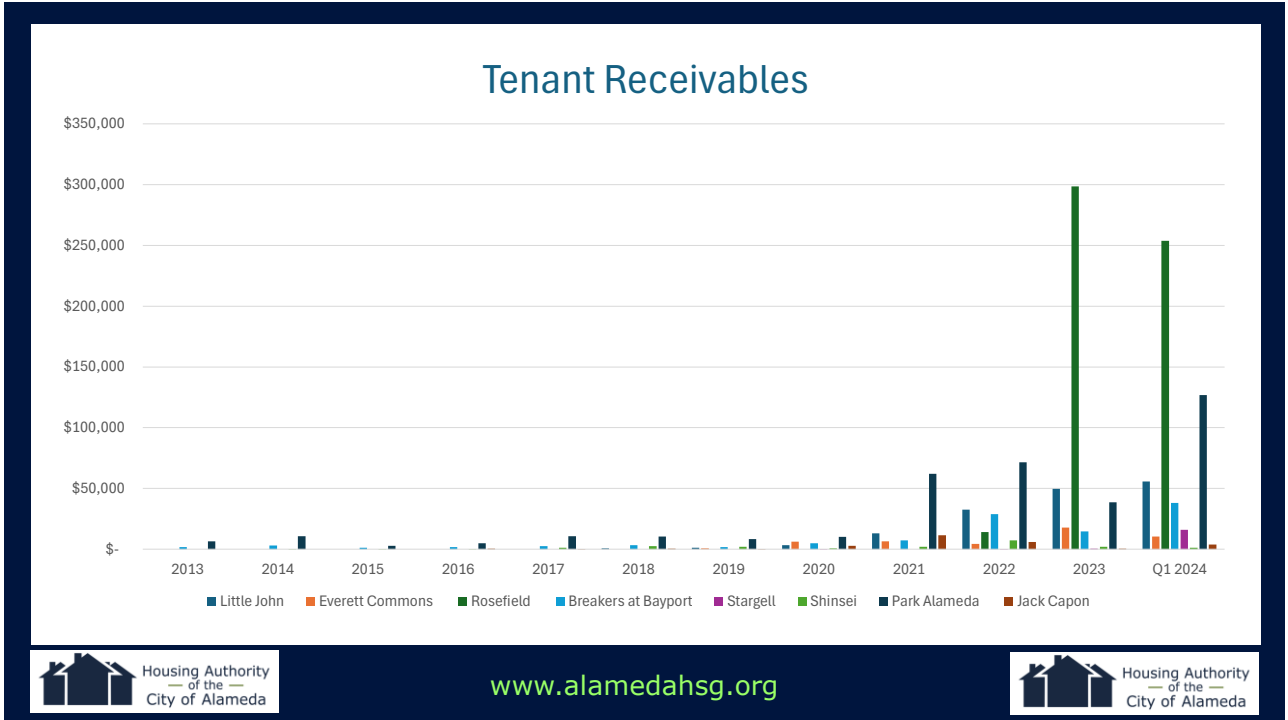
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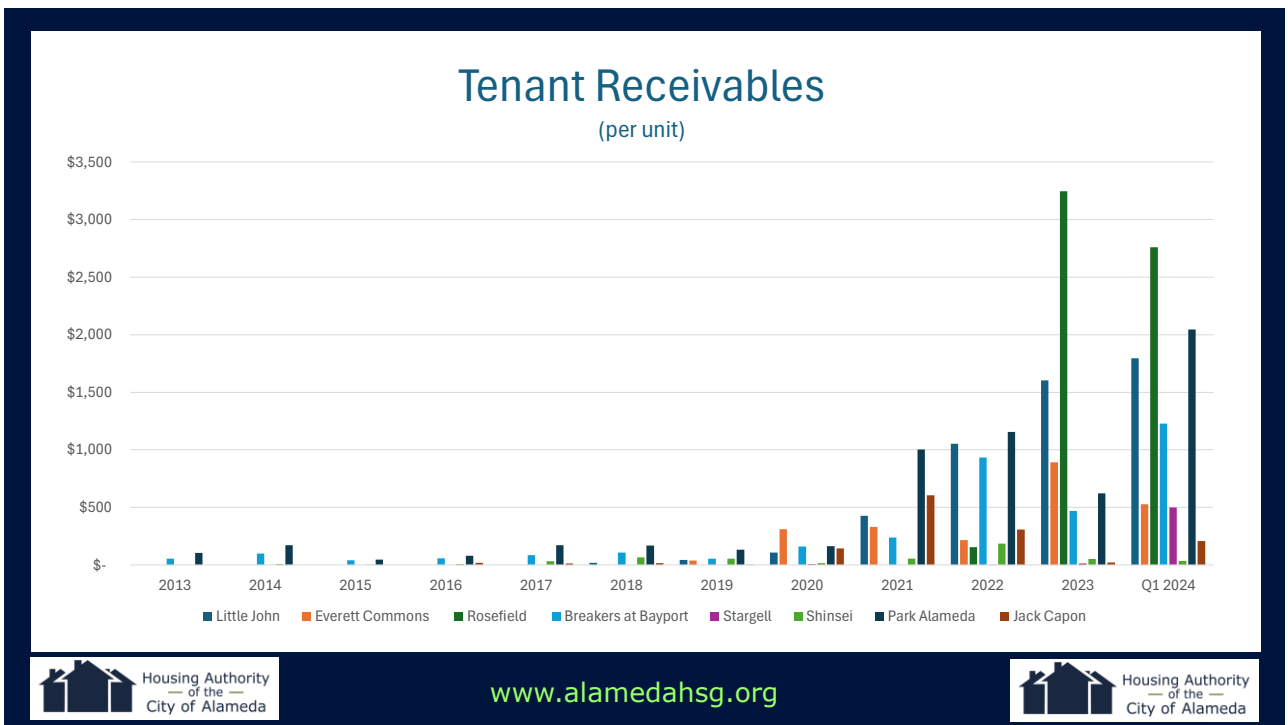
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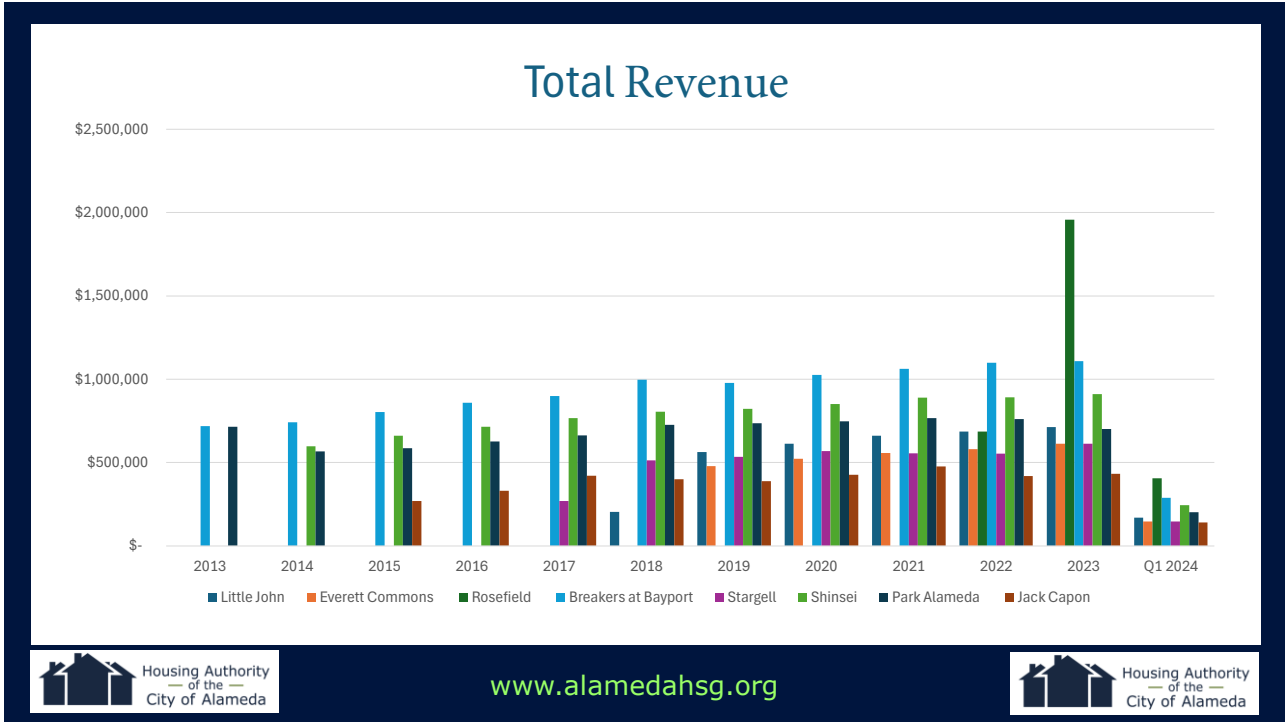
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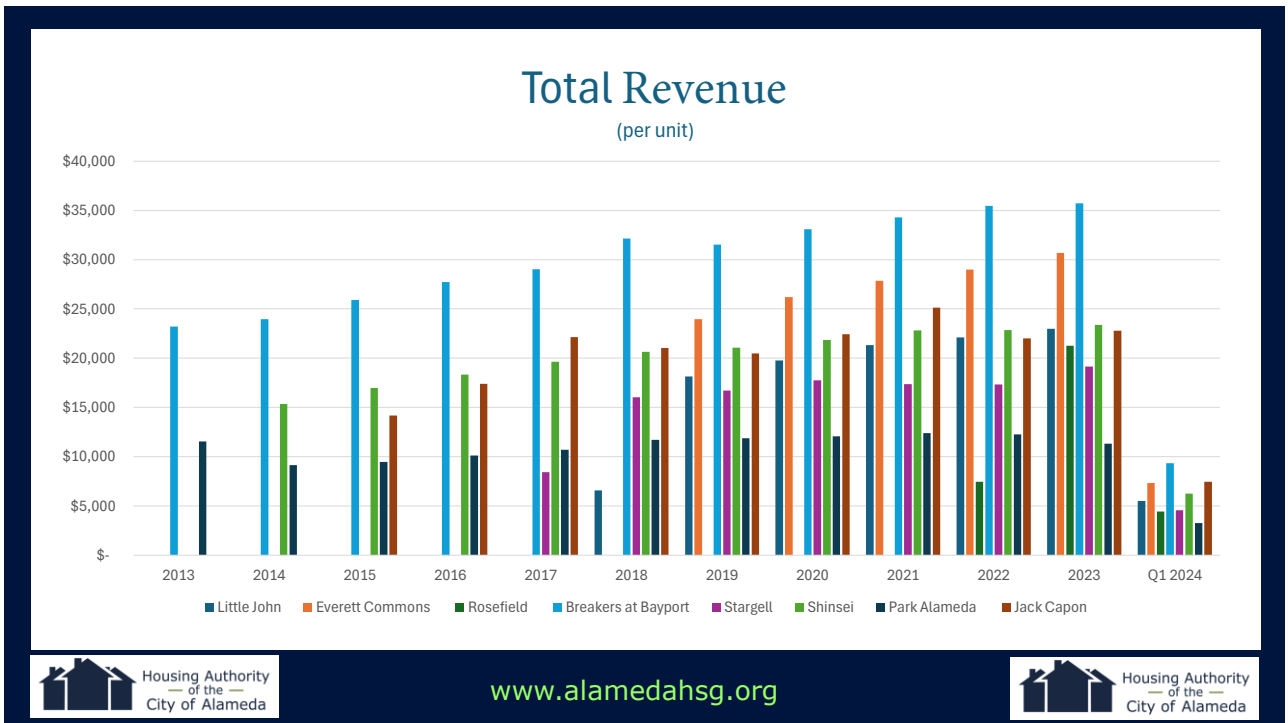
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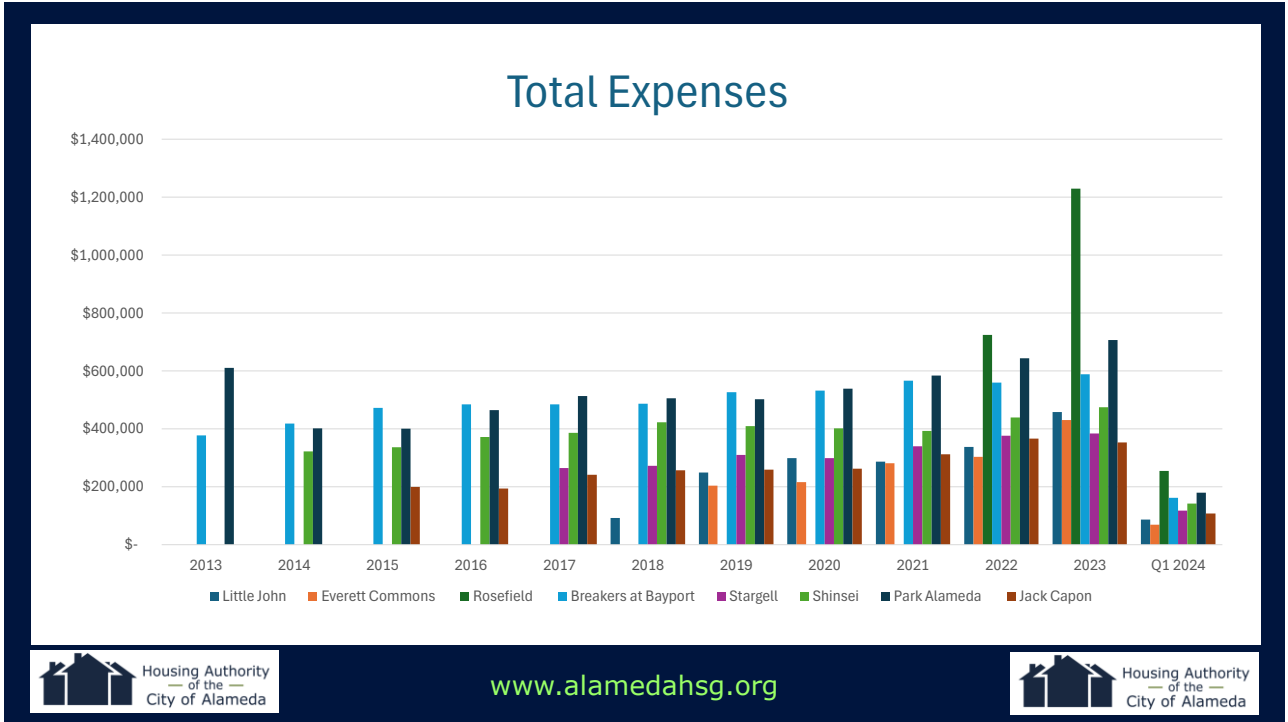
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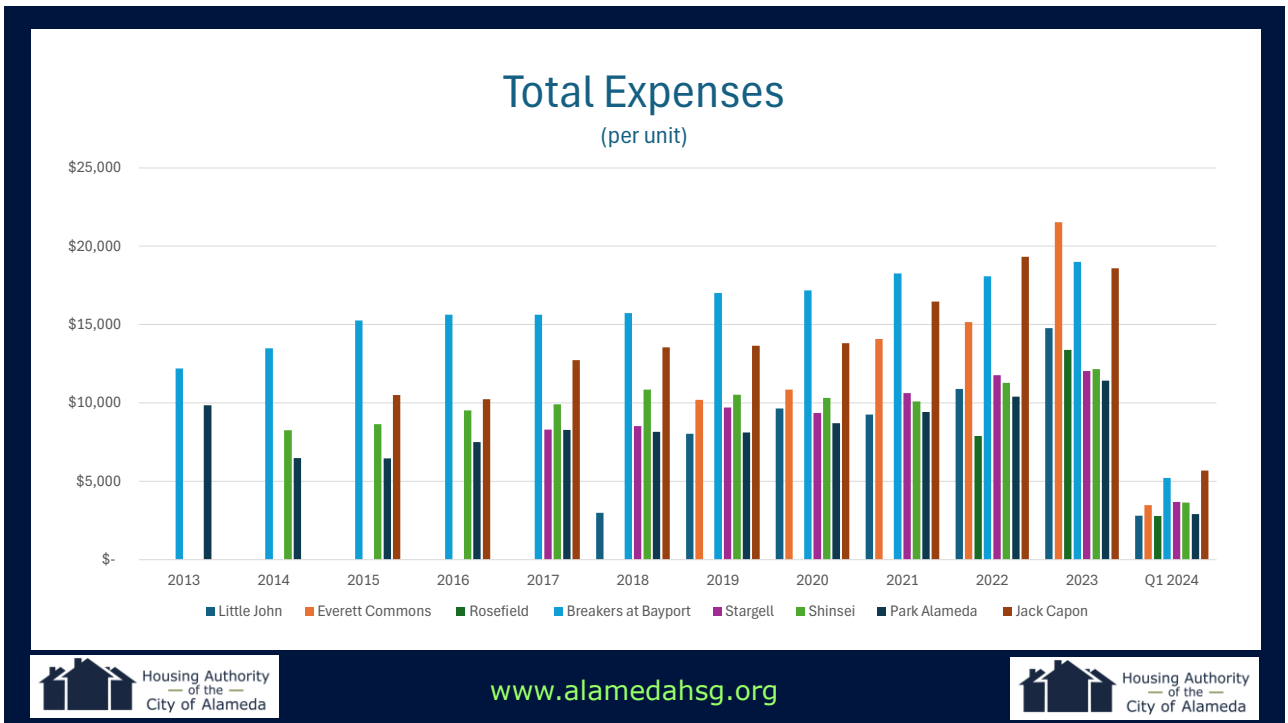
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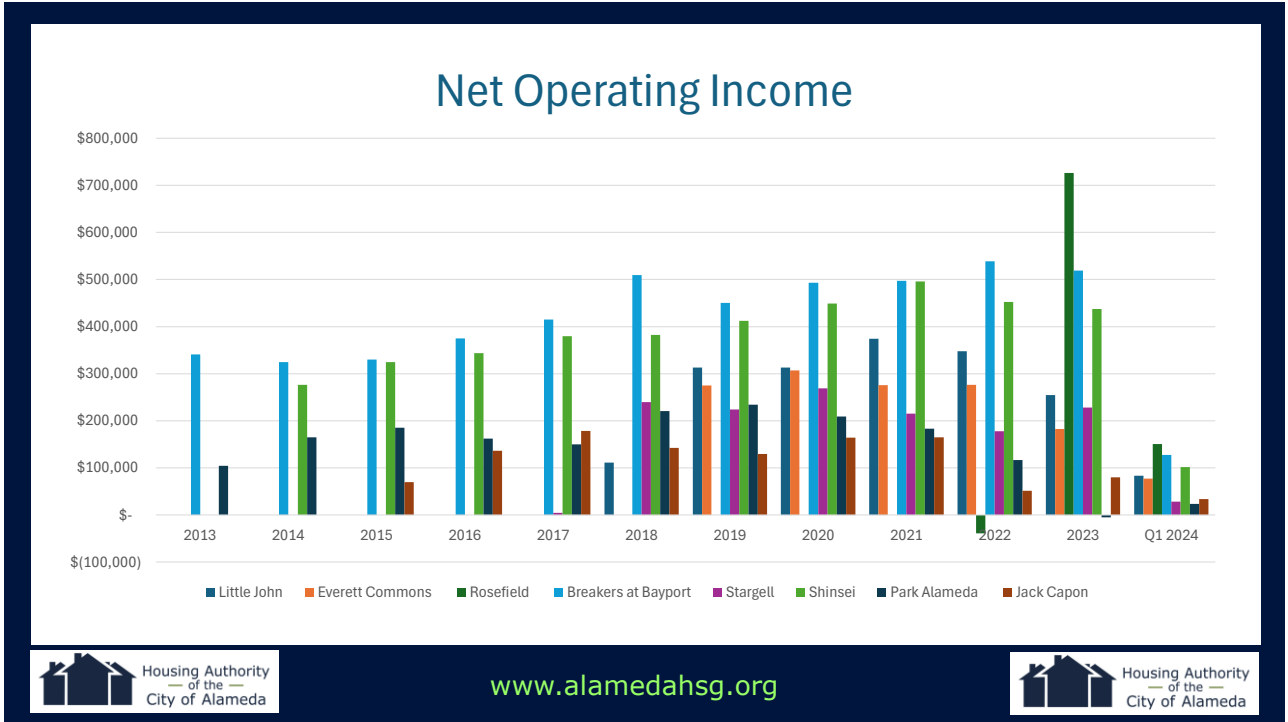
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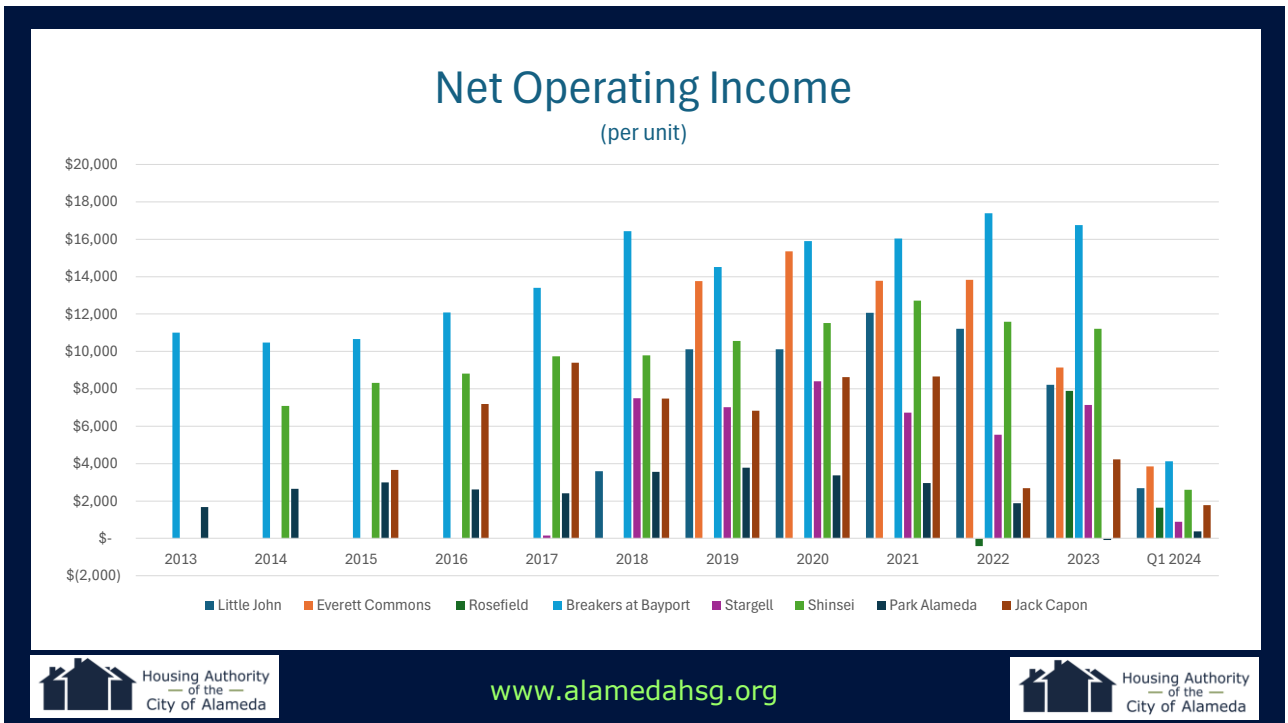
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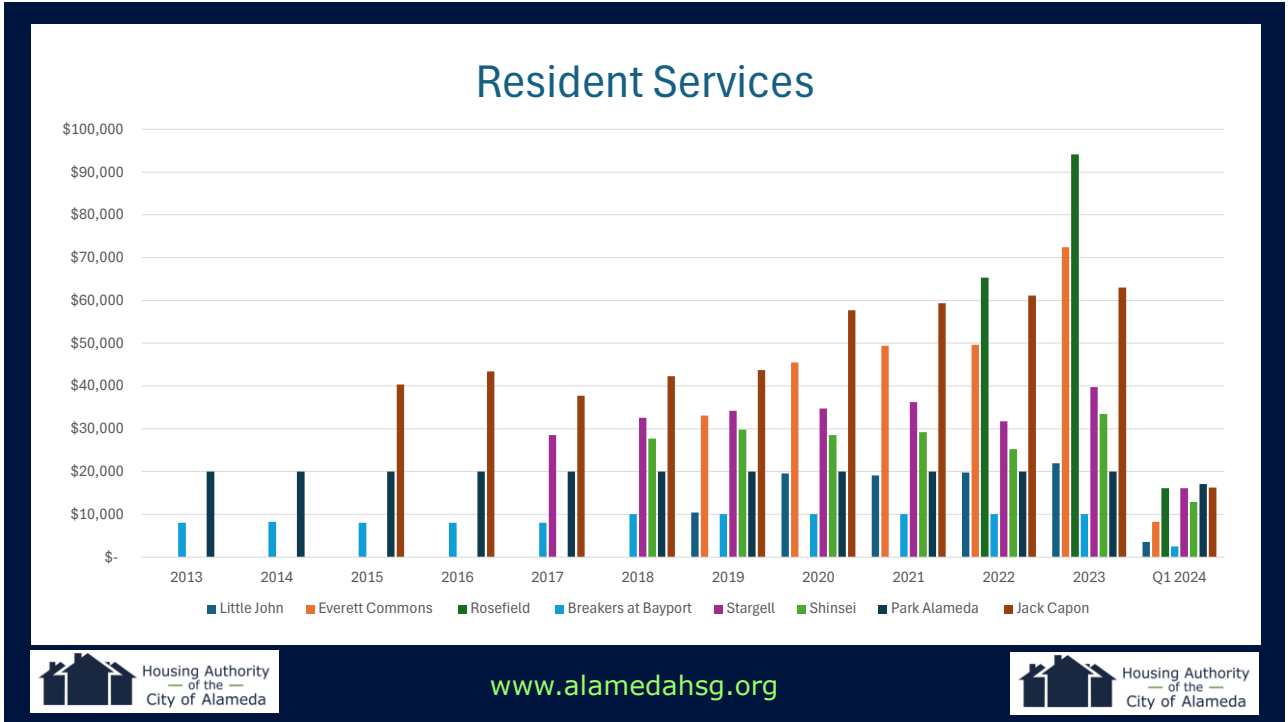


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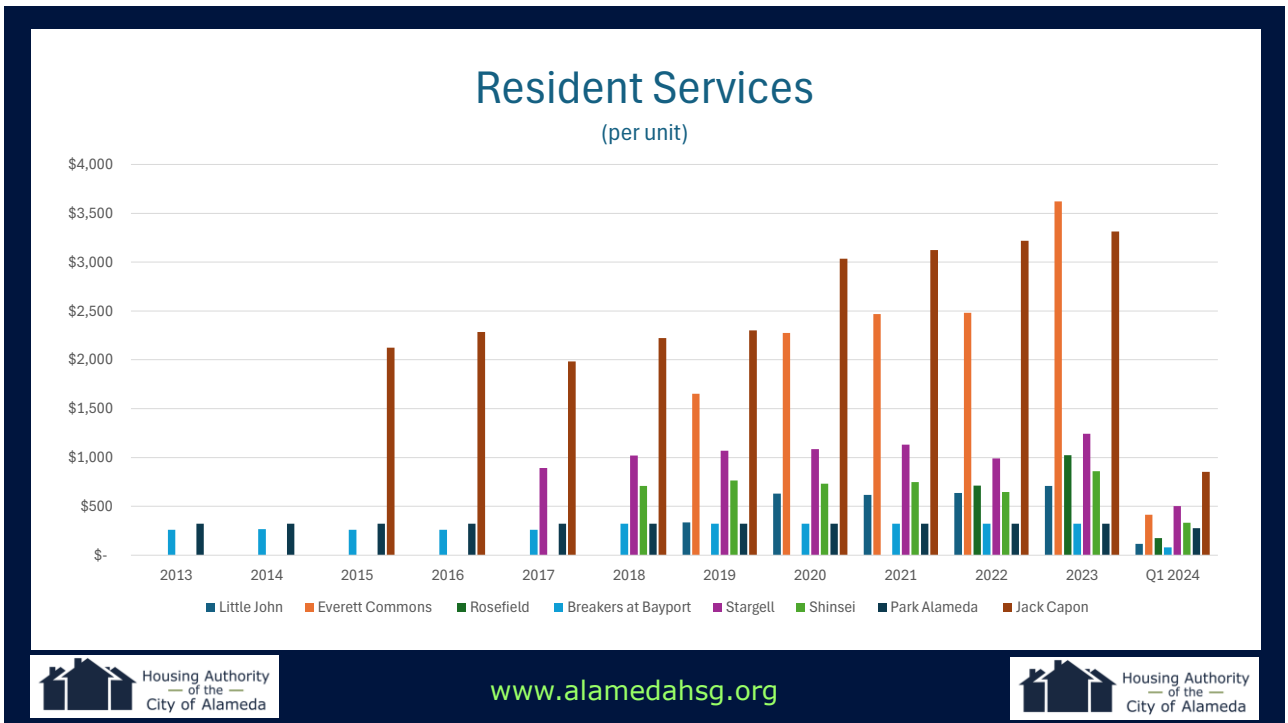


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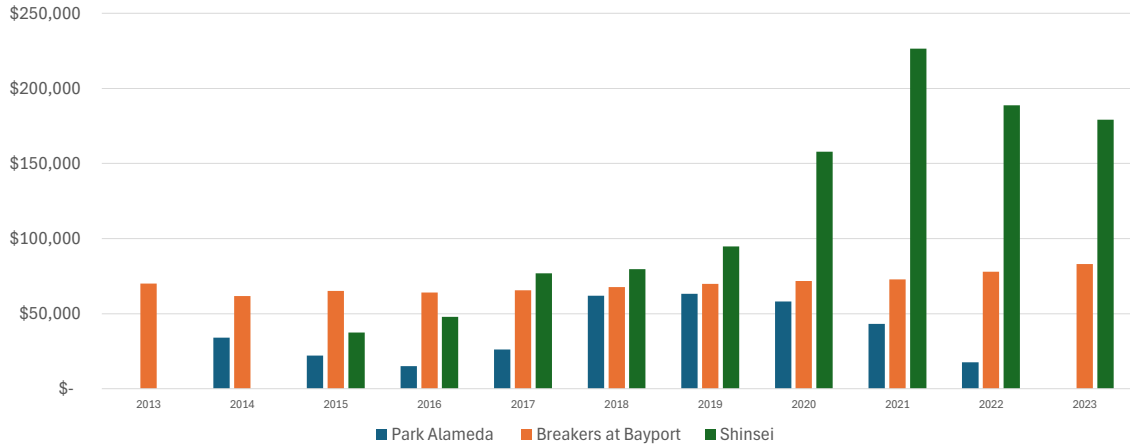


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## Incentive Management Fee



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## Breakers at Bayport

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 157,216	\$ 172,623	\$ (15,407)	-9%	\$ 12,094
Subsidy Revenue	\$ 138,321	\$ 129,495	\$ 8,826	7%	\$ 10,640
Vacancy Loss	\$ (8,265)	\$ (6,043)	\$ (2,222)	37%	\$ (636)
Other Income	\$ 2,015	\$ 40	\$ 1,975	N/A	\$ 155
<b>Total Operating Revenue</b>	<b>\$ 289,287</b>	<b>\$ 296,115</b>	<b>\$ (6,828)</b>	<b>-2%</b>	<b>\$ 22,253</b>
Administrative Expenses	\$ 61,081	\$ 45,259	\$ 15,822	35%	\$ 4,699
Utilities Expense	\$ 24,817	\$ 23,682	\$ 1,135	5%	\$ 1,909
Operating and Maintenance	\$ 42,751	\$ 51,373	\$ (8,622)	-17%	\$ 3,289
Taxes and Insurance	\$ 30,479	\$ 30,054	\$ 425	1%	\$ 2,345
Resident Services	\$ 2,499	\$ 2,503	\$ (4)	0%	\$ 192
<b>Total Operating Expenses</b>	<b>\$ 161,627</b>	<b>\$ 152,871</b>	<b>\$ 8,756</b>	<b>6%</b>	<b>\$ 12,433</b>
<b>Net Operating Income</b>	<b>\$ 127,660</b>	<b>\$ 143,244</b>	<b>\$ (15,584)</b>	<b>-11%</b>	<b>\$ 9,820</b>
<b>Replacement Reserves</b>	\$ 3,875	\$ 3,875			
<b>Debt Service</b>	\$ 34,788	\$ 34,788			
<b>Net Cash Flow</b>	<b>\$ 88,997</b>	<b>\$ 104,581</b>	<b>\$ (15,584)</b>	<b>-15%</b>	<b>\$ 6,846</b>
<b>Debt Service Coverage Ratio</b>	3.56	4.01			
Operating Expense PUPY	\$ 12,433	\$ 11,759			
Operating Expense PUPM	\$ 4,144	\$ 3,920			
Number of Units	52				
Months In YTD	3				

## Shinsei Gardens

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 102,978	\$ 95,804	\$ 7,174	7%	\$ 10,562
Subsidy Revenue	\$ 150,741	\$ 169,797	\$ (19,056)	-11%	\$ 15,461
Vacancy Loss	\$ (11,831)	\$ (6,000)	\$ (5,831)	97%	\$ (1,213)
Financial Revenue	\$ -	\$ -	\$ -	N/A	\$ -
Other Income	\$ 2,000	\$ 1,102	\$ 898	81%	\$ 205
<b>Total Operating Revenue</b>	<b>\$ 243,888</b>	<b>\$ 260,703</b>	<b>\$ (16,815)</b>	<b>-6%</b>	<b>\$ 25,014</b>
Administrative Expenses	\$ 36,845	\$ 35,527	\$ 1,318	4%	\$ 3,779
Utilities Expense	\$ 25,619	\$ 18,180	\$ 7,439	41%	\$ 2,628
Operating and Maintenance	\$ 45,777	\$ 61,238	\$ (15,461)	-25%	\$ 4,695
Taxes and Insurance	\$ 21,083	\$ 23,267	\$ (2,184)	-9%	\$ 2,162
Resident Services	\$ 12,905	\$ 8,835	\$ 4,070	46%	\$ 1,324
<b>Total Operating Expenses</b>	<b>\$ 142,229</b>	<b>\$ 147,047</b>	<b>\$ (4,818)</b>	<b>-3%</b>	<b>\$ 14,588</b>
<b>Net Operating Income</b>	<b>\$ 101,659</b>	<b>\$ 113,656</b>	<b>\$ (11,997)</b>	<b>-11%</b>	<b>\$ 10,427</b>
<b>Replacement Reserves</b>	\$ 5,850	\$ 5,850			
<b>Debt Service</b>	None	None			
<b>Net Cash Flow</b>	<b>\$ 95,809</b>	<b>\$ 107,806</b>	<b>\$ (11,997)</b>	<b>-11%</b>	<b>\$ 9,827</b>
<b>Debt Service Coverage Ratio</b>	None	None			
Operating Expense PUPY	\$ 14,588	\$ 15,082			
Operating Expense PUPM	\$ 4,863	\$ 5,027			
Number of Units	39				
Months In YTD	3				

## Park Alameda

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 127,795	\$ 146,111	\$ (18,316)	-13%	\$ 8,245
Subsidy Revenue	\$ 94,938	\$ 89,429	\$ 5,509	6%	\$ 6,125
Vacancy Loss	\$ (20,870)	\$ (23,554)	\$ 2,684	-11%	\$ (1,346)
Other Income	\$ 821	\$ 2,554	\$ (1,733)	-68%	\$ 53
<b>Total Operating Revenue</b>	<b>\$ 202,684</b>	<b>\$ 214,540</b>	<b>\$ (11,856)</b>	<b>-6%</b>	<b>\$ 13,076</b>
Administrative Expenses	\$ 49,529	\$ 55,312	\$ (5,783)	-10%	\$ 3,195
Utilities Expense	\$ 22,997	\$ 17,797	\$ 5,200	29%	\$ 1,484
Operating and Maintenance	\$ 55,923	\$ 43,278	\$ 12,645	29%	\$ 3,608
Taxes and Insurance	\$ 33,821	\$ 30,653	\$ 3,168	10%	\$ 2,182
Resident Services	\$ 17,085	\$ 1,749	\$ 15,336	877%	\$ 1,102
<b>Total Operating Expenses</b>	<b>\$ 179,355</b>	<b>\$ 148,789</b>	<b>\$ 30,566</b>	<b>21%</b>	<b>\$ 11,571</b>
<b>Net Operating Income</b>	<b>\$ 23,329</b>	<b>\$ 65,751</b>	<b>\$ (42,422)</b>	<b>-65%</b>	<b>\$ 1,505</b>
<b>Replacement Reserves</b>	\$ 7,983	\$ 7,983			
<b>Debt Service</b>	None	None			
<b>Net Cash Flow</b>	<b>\$ 15,347</b>	<b>\$ 57,769</b>	<b>\$ (42,422)</b>	<b>-73%</b>	<b>\$ 990</b>
<b>Debt Service Coverage Ratio</b>	None	None			
Operating Expense PUPY	\$ 11,571	\$ 9,599			
Operating Expense PUPM	\$ 3,857	\$ 3,200			
Number of Units	62				
Months In YTD	3				

## Stargell Commons

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 104,274	\$ 95,009	\$ 9,265	10%	\$ 13,034
Subsidy Revenue	\$ 53,973	\$ 63,832	\$ (9,859)	-15%	\$ 6,747
Vacancy Loss	\$ (13,395)	\$ (2,440)	\$ (10,955)	449%	\$ (1,674)
Other Income	\$ 986	\$ 1,254	\$ (268)	-21%	\$ 123
<b>Total Operating Revenue</b>	<b>\$ 145,838</b>	<b>\$ 157,655</b>	<b>\$ (11,817)</b>	<b>-7%</b>	<b>\$ 18,230</b>
Administrative Expenses	\$ 32,422	\$ 30,702	\$ 1,720	6%	\$ 4,053
Utilities Expense	\$ 18,328	\$ 14,697	\$ 3,631	25%	\$ 2,291
Operating and Maintenance	\$ 28,779	\$ 25,344	\$ 3,435	14%	\$ 3,597
Taxes and Insurance	\$ 21,900	\$ 22,395	\$ (495)	-2%	\$ 2,738
Resident Services	\$ 16,106	\$ 10,407	\$ 5,699	55%	\$ 2,013
<b>Total Operating Expenses</b>	<b>\$ 117,535</b>	<b>\$ 103,545</b>	<b>\$ 13,990</b>	<b>14%</b>	<b>\$ 14,692</b>
<b>Net Operating Income</b>	<b>\$ 28,303</b>	<b>\$ 54,110</b>	<b>\$ (25,807)</b>	<b>-48%</b>	<b>\$ 3,538</b>
<b>Replacement Reserves</b>	\$ 4,800	\$ 4,800			
<b>Debt Service</b>	\$ 17,289	\$ 17,289			
<b>Net Cash Flow</b>	<b>\$ 6,214</b>	<b>\$ 32,021</b>	<b>\$ (25,807)</b>	<b>-81%</b>	<b>\$ 777</b>
<b>Debt Service Coverage Ratio</b>	1.36	2.85			
Operating Expense PUPY	\$ 14,692	\$ 12,943			
Operating Expense PUPM	\$ 4,897	\$ 4,314			
Number of Units	32				
Months In YTD	3				

## Jack Capon Villas

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 26,770	\$ 24,465	\$ 2,305	9%	\$ 5,636
Subsidy Revenue	\$ 99,980	\$ 105,354	\$ (5,374)	-5%	\$ 21,048
Vacancy Loss	\$ -	\$ (12,982)	\$ 12,982	-100%	\$ -
Other Income	\$ 11,590	\$ 625	\$ 10,965	1754%	\$ 2,440
<b>Total Operating Revenue</b>	<b>\$ 138,340</b>	<b>\$ 117,462</b>	<b>\$ 20,878</b>	<b>18%</b>	<b>\$ 29,124</b>
Administrative Expenses	\$ 23,466	\$ 26,762	\$ (3,296)	-12%	\$ 4,940
Utilities Expense	\$ 7,649	\$ 8,132	\$ (483)	-6%	\$ 1,610
Operating and Maintenance	\$ 36,056	\$ 38,872	\$ (2,816)	-7%	\$ 7,591
Taxes and Insurance	\$ 8,748	\$ 10,686	\$ (1,938)	-18%	\$ 1,842
Resident Services	\$ 16,218	\$ 16,218	\$ -	0%	\$ 3,414
<b>Total Operating Expenses</b>	<b>\$ 92,137</b>	<b>\$ 100,670</b>	<b>\$ (8,533)</b>	<b>-8%</b>	<b>\$ 19,397</b>
<b>Net Operating Income</b>	<b>\$ 46,203</b>	<b>\$ 16,792</b>	<b>\$ 29,411</b>	<b>175%</b>	<b>\$ 9,727</b>
<b>Replacement Reserves</b>	\$ 2,850	\$ 2,850			
<b>Debt Service</b>	\$ 7,158	\$ 7,158			
<b>Net Cash Flow</b>	<b>\$ 36,195</b>	<b>\$ 6,784</b>	<b>\$ 29,411</b>	<b>434%</b>	<b>\$ 7,620</b>
<b>Debt Service Coverage Ratio</b>	6.06	1.95			
Operating Expense PUPY	\$ 19,397	\$ 21,194			
Operating Expense PUPM	\$ 6,466	\$ 7,065			
Number of Units	19				
Months In YTD	3				

## Littlejohn Commons

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 46,083	\$ 31,281	\$ 14,802	47%	\$ 5,946
Subsidy Revenue	\$ 133,549	\$ 164,220	\$ (30,671)	-19%	\$ 17,232
Vacancy Loss	\$ (9,294)	\$ (3,910)	\$ (5,384)	138%	\$ (1,199)
Other Gain/Loss	\$ (7,573)	\$ (3,343)	\$ (4,230)	NA	\$ (977)
Other Income	\$ (2,659)	\$ (22,811)	\$ 20,152	-88%	\$ (343)
<b>Total Operating Revenue</b>	<b>\$ 160,106</b>	<b>\$ 165,437</b>	<b>\$ (5,331)</b>	<b>-3%</b>	<b>\$ 20,659</b>
Administrative Expenses	\$ 19,444	\$ 30,985	\$ (11,541)	-37%	\$ 2,509
Utilities Expense	\$ 11,614	\$ 13,777	\$ (2,163)	-16%	\$ 1,499
Operating and Maintenance	\$ 28,561	\$ 25,377	\$ 3,184	13%	\$ 3,685
Taxes and Insurance	\$ 19,955	\$ 18,509	\$ 1,446	8%	\$ 2,575
Resident Services	\$ 3,523	\$ 5,448	\$ (1,925)	-35%	\$ 455
<b>Total Operating Expenses</b>	<b>\$ 83,097</b>	<b>\$ 94,096</b>	<b>\$ (10,999)</b>	<b>-12%</b>	<b>\$ 10,722</b>
<b>Net Operating Income</b>	<b>\$ 77,009</b>	<b>\$ 71,341</b>	<b>\$ 5,668</b>	<b>8%</b>	<b>\$ 9,937</b>
<b>Replacement Reserves</b>	\$ 3,875	\$ 3,875			
<b>Debt Service</b>	\$ 59,127	\$ 59,127			
<b>Net Cash Flow</b>	<b>\$ 14,007</b>	<b>\$ 8,339</b>	<b>\$ 5,668</b>	<b>68%</b>	<b>\$ 1,807</b>
<b>Debt Service Coverage Ratio</b>	1.24	1.14			
Operating Expense PUPY	\$ 10,722	\$ 12,141			
Operating Expense PUPM	\$ 3,574	\$ 4,047			
Number of Units	31				
Months In YTD	3				



## Everett Commons

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 35,139	\$ 44,682	\$ (9,543)	-21%	\$ 7,028
Subsidy Revenue	\$ 110,150	\$ 116,913	\$ (6,763)	-6%	\$ 22,030
Vacancy Loss	\$ (2,757)	\$ (3,237)	\$ 480	-15%	\$ (551)
Other Gain/Loss	\$ (3,513)	\$ (2,834)	\$ (679)	NA	\$ (703)
Other Income	\$ (1,353)	\$ (12,075)	\$ 10,722	-89%	\$ (271)
<b>Total Operating Revenue</b>	<b>\$ 137,666</b>	<b>\$ 143,449</b>	<b>\$ (5,783)</b>	<b>-4%</b>	<b>\$ 27,533</b>
Administrative Expenses	\$ 19,662	\$ 19,655	\$ 7	0%	\$ 3,932
Utilities Expense	\$ (5,991)	\$ 15,425	\$ (21,416)	-139%	\$ (1,198)
Operating and Maintenance	\$ 27,809	\$ 15,621	\$ 12,188	78%	\$ 5,562
Taxes and Insurance	\$ 19,556	\$ 13,283	\$ 6,273	47%	\$ 3,911
Resident Services	\$ 8,251	\$ 12,407	\$ (4,156)	-33%	\$ 1,650
<b>Total Operating Expenses</b>	<b>\$ 69,287</b>	<b>\$ 76,391</b>	<b>\$ (7,104)</b>	<b>-9%</b>	<b>\$ 13,857</b>
<b>Net Operating Income</b>	<b>\$ 68,379</b>	<b>\$ 67,058</b>	<b>\$ 1,321</b>	<b>2%</b>	<b>\$ 13,676</b>
<b>Replacement Reserves</b>	\$ 3,377	\$ 3,377			
<b>Debt Service</b>	\$ 53,979	\$ 53,979			
<b>Net Cash Flow</b>	<b>\$ 11,023</b>	<b>\$ 9,702</b>	<b>\$ 1,321</b>	<b>14%</b>	<b>\$ 2,205</b>
<b>Debt Service Coverage Ratio</b>	1.20	1.18			
Operating Expense PUPY	\$ 13,857	\$ 15,278			
Operating Expense PUPM	\$ 4,619	\$ 5,093			
Number of Units	20				
Months In YTD	3				

## Rosefield Village

	Actual	Budget	Actual-Budget (\$)	Actual-Budget (%)	PUPY
Rental Revenue	\$ 312,476	\$ 362,847	\$ (50,371)	-14%	\$ 13,586
Subsidy Revenue	\$ 166,736	\$ 177,804	\$ (11,068)	-6%	\$ 7,249
Vacancy Loss	\$ (59,216)	\$ (27,032)	\$ (32,184)	119%	\$ (2,575)
Other Gain/Loss	\$ 28,111	\$ (397)	\$ 28,508	NA	\$ 1,222
Other Income	\$ (2,992)	\$ (52,244)	\$ 49,252	-94%	\$ (130)
<b>Total Operating Revenue</b>	<b>\$ 445,115</b>	<b>\$ 460,978</b>	<b>\$ (15,863)</b>	<b>-3%</b>	<b>\$ 19,353</b>
Administrative Expenses	\$ 112,514	\$ 77,276	\$ 35,238	46%	\$ 4,892
Utilities Expense	\$ 19,342	\$ 55,510	\$ (36,168)	-65%	\$ 841
Operating and Maintenance	\$ 56,950	\$ 36,745	\$ 20,205	55%	\$ 2,476
Taxes and Insurance	\$ 50,513	\$ 48,765	\$ 1,748	4%	\$ 2,196
Resident Services	\$ 16,066	\$ 23,344	\$ (7,278)	-31%	\$ 699
<b>Total Operating Expenses</b>	<b>\$ 255,385</b>	<b>\$ 241,640</b>	<b>\$ 13,745</b>	<b>6%</b>	<b>\$ 11,104</b>
<b>Net Operating Income</b>	<b>\$ 189,730</b>	<b>\$ 219,338</b>	<b>\$ (29,608)</b>	<b>-13%</b>	<b>\$ 8,249</b>
<b>Replacement Reserves</b>	\$ 13,800	\$ 13,800			
<b>Debt Service</b>	\$ 181,173	\$ 181,173			
<b>Net Cash Flow</b>	<b>\$ (5,243)</b>	<b>\$ 24,365</b>	<b>\$ (29,608)</b>	<b>-122%</b>	<b>\$ (228)</b>
<b>Debt Service Coverage Ratio</b>	0.97	1.13			
Operating Expense PUPY	\$ 11,104	\$ 10,506			
Operating Expense PUPM	\$ 3,701	\$ 3,502			
Number of Units	92				
Months In YTD	3				



## ISLAND CITY DEVELOPMENT

Fax (510) 522-7848 | TTY/TRS 711

To: Board of Directors  
Island City Development

From: Tony Weng, Senior Project Manager

Date: June 26, 2024

Re: Ratify the legal services contracts between Gubb and Barshay LLP and each of the limited partnerships for the three proposed projects at North Housing Block A.

---

### **BACKGROUND**

Island City Development (ICD) performs real estate development services for the North Housing project. ICD is the developer of North Housing Block A, which is the first phase of North Housing, with a total of 155 apartments, to be built as three separate projects: The Estuary I, The Estuary II, and Linnet Corner.

The North Housing Project is the redevelopment of approximately 12 acres of land at the former Alameda Naval Air Station (NAS) at the site known as Coast Guard Housing. The Housing Authority is leading the development under a homeless accommodation conveyance, alongside partners Alameda Point Collaborative (APC) and Building Futures. The North Housing parcel was successfully transferred to Housing Authority ownership on May 30, 2019. The Housing Authority of the City of Alameda Board of Commissioners approved the Agency's Vision for the North Housing site at its August 2019 meeting.

Please see previous Board reports for project details.

### **DISCUSSION**

#### Ratify the Legal Services Contracts with Gubb and Barshay LLP

Previously, the Board approved the contracts with Carle, Mackie, Power & Ross LLP (CMPR) for Low-Income Housing Tax Credit (LIHTC) and Real Estate Transaction Legal Services for the Estuary I, Estuary II, and Linnet Corner projects. The leading attorney with CMPR for our projects moved to Gubb and Barshay before the expected loan closings. For continuity and business needs, the legal services contracts were transferred from CMPR to Gubb and Barshay. Staff comes before the Board and recommends the Board to accept staff's recommendation to approve and ratify the legal services contracts with Gubb and Barshay for the three proposed projects at North Housing Block A.

The not-to-exceed contract amount between Gubb and Barshay and Lakehurst and Mosley LP is \$126,699 for the Estuary I project.

The not-to-exceed contract amount between Gubb and Barshay and Mosley and Mabuhay



LP is \$136,699 for the Estuary II project.

The not-to-exceed contract amount between Gubb and Barshay and Mabuhay and Lakehurst LP is \$136,699 for the Linnet Corner project.

The legal services contracts are attached to this memo.

### **FISCAL IMPACT**

The cost of the contracts discussed above is within the budget for the three proposed projects at North Housing Block A.

### **CEQA**

Not Applicable.

### **RECOMMENDATION**

Ratify the legal services contracts between Gubb and Barshay LLP and each of the limited partnerships for the three proposed projects at North Housing Block A.

### **ATTACHMENTS**

1. Att 1\_Estuary I\_Legal Services Contract
2. Att 2\_Estuary II\_Legal Services Contract
3. Att 3\_Linnet Corner\_Legal Services Contract

Respectfully submitted,



Tony Weng, Senior Project Manager

## CONSULTANT SERVICES CONTRACT

**THIS CONSULTANT SERVICES CONTRACT** ("Agreement"), entered into this 22nd day of January, 2024 ("Effective Date"), by and between LAKEHURST AND MOSLEY LP, a California limited partnership (hereinafter referred to as "Owner"), and Gubb and Barshay LLP, a California limited liability partnership whose address is 235 Montgomery Street, Suite 1110 San Francisco, CA 94104, (hereinafter referred to as "Consultant"), is made with reference to the following:

### **RECITALS:**

A. Owner has determined that it requires professional services for Low-Income Housing Tax Credits (LIHTC) and Real Estate Transaction Legal services related to the North Housing PSH I project at North Housing Block A.

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

C. Consultant represents that it 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. Owner and Consultant desire to enter into an agreement to provide the subject services as discussed in more detail below.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. **TERM.**

The term of this Agreement shall commence on the Effective Date and end on December 31, 2026 unless extended, as discussed herein, or terminated earlier as provided in Paragraph 20 below ("Term"). The parties may choose by mutual agreement to extend the term of this Agreement up to a maximum of 60 months (5 year 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.**

2.1 Consultant shall provide the following services to Owner, (i) those services outlined and specified in the Scope of Services attached hereto as Exhibit A and incorporated herein by this reference; and (ii) those services outlined and specified in Consultant's accepted bid proposal attached hereto as Exhibit B and incorporated herein by this reference, all at the not to exceed fee stated in Paragraph 3 below. In the event of any inconsistencies between Consultant's accepted bid proposal and this Agreement, the terms of this Agreement shall govern.

2.2 Consultant represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement, and Owner relies upon this representation. Consultant shall perform to the satisfaction of Owner, and Consultant

shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant further represents and warrants to Owner that it has all licenses, permits, qualifications and approvals of whatever nature are legally required to practice its profession. Consultant further represents that it shall keep all such licenses and approvals in effect during the Term of this Agreement.

2.3 Consultant affirms that it is fully apprised of all of the work to be performed under this Agreement; and Consultant agrees it can properly perform this work for the fee stated in Paragraph 3. Consultant shall not perform services or provide products that are not set forth in this Agreement, unless by prior written request of Owner.

2.4 Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner.

2.5 Acceptance by Owner of Consultant's performance under this Agreement does not operate as a release of Consultant's responsibility for full compliance with the terms of this Agreement.

### 3. **COMPENSATION TO CONSULTANT.**

3.1 Owner shall pay the Consultant for services performed, products provided and expenses incurred for the Scope of Services defined in Exhibit A, and according to the Fee Schedule set forth in Exhibit B. Maximum payment by Owner to Consultant for the services provided herein shall not exceed One Hundred Twenty-Six Thousand Six Hundred Ninety-Nine Dollars and Zero Cents (\$126,699.00), including all expenses ("Contracted Amount"). Owner shall not be responsible for any fees or costs incurred above or beyond the aforementioned Contracted Amount and Owner shall have no obligation to purchase any specified amount of services or products, unless agreed to in writing by Owner pursuant to Paragraph 4 below. Consultant shall invoice Owner for the services performed pursuant to the Scope of Services attached hereto as Exhibit A, at the rates, inclusive of all taxes, insurance, benefits, wages, profit, overhead, and every other personnel cost borne by Consultant, set forth in the Scope of Services attached hereto as Exhibit A; provided, however, in no event shall any and all costs paid under this Agreement exceed the Contracted Amount.

3.2 CONSULTANT shall be paid only in accordance with an invoice submitted to Owner by Consultant. Owner shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to Consultant only after services have been rendered or delivery of materials or products, and acceptance has been made by Owner. For this Agreement, invoices can be submitted by email to primary contact (below) with a copy to [accountspayable@alamedahsg.org](mailto:accountspayable@alamedahsg.org).

Island City Development  
c/o: Lakehurst and Mosley LP  
701 Atlantic Avenue

Alameda, CA 94501-2161  
ATTN: Sylvia Martinez  
(510)747-4343  
Email: [smartinez@alamedahsg.org](mailto:smartinez@alamedahsg.org)

Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; itemization of the description of the work performed (hourly rate and extensions, if applicable), the date of performance, the associated time for completion; and an invoice total.

All contracts over \$25,000 are required to be paid via Electronic Funds Transfer (EFT)/Automated Clearing House (ACH) disbursements. The required forms can be found on the website or by contacting Finance at 510-747-4315.

4. **ALTERATION OR CHANGES TO THE AGREEMENT.**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. No additional services shall be performed by Consultant without a written amendment to this Agreement.

Consultant understands that Owner's Board of Directors, President, or designee, within their delegated authority, are the only authorized Owner representatives who may at any time, by written order, make any alterations within the general scope of this Agreement.

5. **INSPECTION OF SERVICES.**

All performances under this Agreement shall be subject to inspection by Owner. Consultant shall provide adequate cooperation to Owner representatives to permit him/her to determine Consultant's conformity with the terms of this Agreement. If any services performed or products provided by Consultant are not in conformance with the terms of this Agreement, Owner shall have the right to require Consultant to perform the services or provide the products in conformance with the terms of this Agreement at no additional cost to Owner. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, Owner shall have the right to: (1) require Consultant immediately to take all necessary steps to ensure future performance in conformity with the terms of this Agreement; and/or (2) if applicable, reduce the Contract Price to reflect the reduced value of the services performed or products provided. Owner may also terminate this Agreement for default and charge to Consultant any costs incurred by Owner because of Consultant's failure to perform.

Consultant shall establish adequate procedures for self-monitoring to ensure proper performance under this Agreement; and shall permit an Owner representative to monitor, assess or evaluate Consultant's performance under this Agreement at any time upon reasonable notice to Consultant.

6. **TIME IS OF THE ESSENCE.**

Consultant and Owner agree that time is of the essence regarding the performance of this Agreement.

7. **INDEPENDENT CONTRACTOR.**

The Consultant is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of Owner. It is expressly understood and agreed that the Consultant (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which Owner's employees are entitled, including but not limited to overtime, any retirement benefits, injury leave or unemployment insurance, workers' compensation coverage, vacation, and/or sick leave. 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 Consultant. Payments of the above items, if required, are the responsibility of Consultant. The manner and means of conducting the work are under the control of Consultant, 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 Consultant's services. There shall be no employer-employee relationship between the parties; and Consultant shall hold Owner harmless from any and all claims that may be made against Owner based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that Consultant in the performance of this Agreement is subject to the control or direction of Owner merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

Owner and Consultant 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.

**8. IMMIGRATION REFORM AND CONTROL ACT (IRCA).**

Consultant 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. Consultant shall indemnify and hold Owner harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

**9. NON-DISCRIMINATION.**

Consistent with Owner's policy that harassment and discrimination are unacceptable conduct and will not be tolerated, Consultant shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, sexual orientation, pregnancy, sex, age, gender identity, or marital status in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations. Consultant agrees that any and all violations of this provision shall constitute a breach of this Agreement.

**10. INDEMNIFICATION/HOLD HARMLESS.**



10.1 Consultant shall indemnify and hold harmless Owner, its affiliates, its directors, officers, Board of Commissioners, Board of Directors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any act, omission, or services of Consultant, its officers, employees, subcontractors, independent contractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death (Owner employees included), or any other element of damage of any kind or nature whatsoever, relating to or in any way connected with or arising from the performance of Consultant, its officers, employees, subcontractors, independent contractors, agents or representatives from this Agreement. Consultant shall defend, at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or legal action based upon such alleged acts or omissions.

10.2 With respect to any action or claim subject to indemnification herein by Consultant, Consultant shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Owner; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Consultant's indemnification to Indemnitees as set forth herein. Consultant's obligation hereunder shall be satisfied when Consultant has provided to Owner the appropriate form of dismissal relieving Owner from any liability for the action or claim involved.

10.3 The specified insurance limits required in this Agreement shall in no way limit or circumscribe Consultant's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

10.4 Owner does not, and shall not, waive any rights that it may possess against Consultant because of acceptance by Owner, or the deposit with Owner, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. The indemnity obligations of Consultant contained in this Agreement shall survive the termination and expiration of this Agreement.

## 11. **INSURANCE**.

Without limiting or diminishing the Consultant's obligation to indemnify or hold the Owner harmless, Consultant 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, Consultant shall furnish Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Appendix C.

### A. **WAIVER OF SUBROGATION:**

Consultant hereby grants to Owner a waiver of any right to subrogation which any insurer of said Consultant may acquire against Owner by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary

to affect this waiver of subrogation, but this provision applies regardless of whether Owner has received a waiver of subrogation endorsement from the Insurer.

**B. FAILURE TO SECURE:**

If Consultant, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, Owner shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant 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. SUFFICIENCY OF INSURANCE:**

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

Consultant shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

Consultant agrees to notify Owner 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.

**12. CONFLICT OF INTEREST.**

No employee, agent, contractor, officer or official of Owner who exercises any functions or responsibilities with respect to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to it, shall obtain a personal or financial interest in or benefit from any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom they have family or business ties, during his or her tenure or for one (1) year thereafter. The term "contractor" also includes the employees, officers (including board members), agents and subcontractors of Consultant under this Agreement.

Consultant covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with Consultant's performance under this Agreement. Consultant further covenants that no person or subcontractor having any such interest shall be employed or retained by Consultant under this Agreement. Consultant agrees to inform Owner of all Consultant's interests, if any, which are or may be perceived as incompatible with the Owner's interests.

Consultant shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom Consultant is doing business or proposing to do business, in accomplishing the work under this Agreement.

Consultant or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to Owner employees.

In order to carry out the purposes of this section, Consultant shall incorporate, or cause to be incorporated, in all contracts and subcontracts relating to activities pursuant to this Agreement, a provision similar to that of this section.

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant further understands that it may be required to fill out a Statement of Economic Interests, a form provided by the California Fair Political Practices Commission, if the services provided under this Agreement require Consultant 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.

13. **PROHIBITION AGAINST ASSIGNMENTS.**

Consultant 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 Owner. 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 Consultant from Owner 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 Owner by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint venture or syndicate or co tenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

14. **SUBCONTRACTOR APPROVAL.**

Unless prior written consent from Owner 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 Consultant employs subcontractors, such subcontractors shall be required to furnish proof of worker's compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

15. **PERMITS AND LICENSES.**

Consultant shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to Owner, including, but not limited to a City of Alameda business license. Consultant warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Alameda, the City of Alameda and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement relative to the Scope of Services to be performed under Exhibit A, and that service(s) will be performed by properly trained and licensed staff.

**16. REPORTS.**

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 Consultant pursuant to or in connection with this Agreement shall be the exclusive property of Owner. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Owner 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 Owner, and all publication rights are reserved to Owner.

All Reports prepared by Consultant may be used by Owner in execution or implementation of:

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

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

All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on to both sides of the paper except for one original which shall be single sided.

No Report, information nor other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by Owner

**17. RECORDS.**

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Owner that relate to the performance of services under this Agreement. Consultant 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. Consultant shall provide free access to the representatives of Owner or its designees to such books and records at proper times; and gives Owner 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 five (5) years after receipt of final payment.

**18. 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 Consultant to Owner shall be addressed to Owner at:

Island City Development  
c/o: Lakehurst and Mosley LP  
701 Atlantic Avenue  
ALAMEDA CA 94501-2161  
Attention: Vanessa Cooper, President

All notices, demands, requests, or approvals from Owner to Consultant shall be addressed to Consultant at:

Gubb and Barshay LLP  
235 Montgomery Street, Suite 1110  
San Francisco, CA 94104  
Attention: Henry Loh II

19. **NO SMOKING, DRINKING OR RADIO USE.**

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

20. **TERMINATION.**

Owner may, by written notice to Consultant, terminate this Agreement in whole or in part at any time, with or without cause, upon seven (7) days advance written notice. Such termination may be for Owner's convenience or because of Consultant's failure to perform its duties and obligations under this Agreement including, but not limited to, the failure of Consultant to timely perform services pursuant to this Agreement, including, but not limited to the Scope of Services attached as Exhibit A.

20.1 Discontinuance of Services. Upon termination, Consultant shall, unless otherwise directed by the notice, discontinue all services, and deliver to Owner all data, estimates, graphs, summaries, reports, and other related materials as may have been prepared or accumulated by Consultant in performance of services, whether completed or in progress.

20.2 Effect of Termination for Convenience. If the termination is to be for the convenience of Owner, then Owner shall compensate Consultant for services satisfactorily provided through the date of termination. Consultant shall provide documentation deemed adequate by Owner to show the services actually completed by Consultant prior to the date of termination, no later than 30 days after the date of termination. This Agreement shall terminate on the date of the written Notice of Termination delivered to Consultant.

20.3 Effect of Termination for Cause. In the event Consultant hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant 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 Consultant from Owner of written notice of default, specifying the nature of such default and the steps necessary to cure such default, Owner may terminate the Agreement forthwith by giving to the Consultant written notice thereof. If the termination is due to the failure of Consultant to fulfill its obligations

under this Agreement, Consultant shall be compensated for those services which have been completed in accordance with this Agreement and accepted by the Owner. In such case, Owner may take over the work and prosecute the same to completion by contract or otherwise. Further, Consultant shall be liable to Owner for any reasonable additional costs incurred by Owner to revise work for which Owner has compensated Consultant under this Agreement, but which Owner has determined in its sole discretion needs to be revised in part or whole to complete the project. Prior to discontinuance of services, Owner may arrange for a meeting with Consultant to determine what steps, if any, Consultant can take to adequately fulfill its requirements under this Agreement. In its sole discretion, Owner may propose an adjustment to the terms and conditions of the Agreement, including the contract price. Such contract adjustments, if accepted in writing by the parties, shall become binding on Consultant and shall be performed as part of this Agreement. Termination of this Agreement for cause may be considered by Owner in determining whether to enter into future agreements with Consultant.

20.4 Notwithstanding any of the provisions of this Agreement, Consultant's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty, or a willful or material breach of this Agreement by Consultant, or in the event of Consultant's unwillingness or inability for any reason whatsoever to perform the duties hereunder, or if the Agreement is terminated pursuant to this Paragraph 20. In such event, Consultant shall not be entitled to any further compensation under this Agreement.

20.5 Cumulative Remedies. The rights and remedies of the parties provided in this Paragraph are in addition to any other rights and remedies provided by law, equity or under this Agreement.

21. **FORCE MAJEURE.**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as Acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply, provided the other party receives written notice of such force majeure event no later than fourteen (14) calendar days after commencement of such force majeure event.

22. **COMPLIANCES.**

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

23. **GOVERNING LAW; SEVERABILITY.**

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, and the parties

waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

24. **NONCONFORMING PAYMENTS.**

In the event Consultant receives payment under this Agreement which is later disallowed by Owner for nonconformance with the terms of the Agreement, Consultant shall promptly refund the disallowed amount to Owner on request; or at its option Owner may offset the amount disallowed from any payment due to Consultant.

25. **NO PARTIAL DELIVERY OF SERVICES.**

Consultant shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

26. **LABOR STANDARDS.**

Consultant shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

27. **SOCIAL MEDIA/ADVERTISEMENT.**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, or displayed any information, 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 Owner to do otherwise. This prohibition includes, but is not limited to, posting any information as to this Agreement and Consultant's relationship with Owner on Facebook, Twitter, LinkedIn, Yelp, Instagram and any other social media.

28. **CONFIDENTIALITY.**

28.1. **Definition.** Consultant shall observe all Federal, State and Owner regulations concerning confidentiality of records. Consultant shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: any information or data obtained by Consultant relating to Owner clients and tenants and any opinions and conclusions based upon such information, unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; Owner information or data which is not subject to public disclosure; Owner operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement, and any personally identifiable information protected under The Privacy Act of 1974(5 U.S.C. Section 552a), Section 6 of the Housing Act of 1937, The Freedom of Information Act (FOIA), 5 U.S.C. § 552, Section 208 of The E-Government Act, and HUD Notice PIH 2-15-06 issued on April 23, 2015.

28.2. **Nondisclosure and Nonuse Obligation.** Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner. Consultant agrees that it will not use, disseminate, or in any way disclose any Confidential Information to any person, firm, or business, except that Consultant may use Confidential Information to the extent necessary to perform its obligations under this Agreement. Consultant agrees that it shall treat all Confidential Information with the same degree of care as the Consultant accords to its own Confidential Information, but in no case less than reasonable care. Consultant agrees that it shall disclose Confidential Information only to those of its employees who need to know such information, and the Consultant certifies that such employees have previously agreed, as a condition of employment, to be bound by terms and conditions applicable to Consultant under this Agreement. Consultant shall immediately give notice to Owner of any unauthorized use or disclosure of Confidential Information. For agreements involving information technology or access to agency data, the consultant shall be expected to use the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the agency's information, as it uses to protect its own, including standard anti-virus/malware deployment.

**28.3. Exclusions from Nondisclosure and Nonuse Obligations.** The obligations under 28.2 ("Nondisclosure and Nonuse Obligation") shall not apply to such portion that Consultant 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.

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

**29. WAIVER.**

Any waiver by Owner of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of Owner to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing Owner from enforcement of the terms of this Agreement.

**30. 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

**31. ADMINISTRATION.**

The Owner President (or designee) shall administer this Agreement on behalf of Owner and may issue all consents, approvals, directives, and agreements on behalf of



Owner called for by this Agreement, except as otherwise expressly provided for in this Agreement.

### 32. **GENERAL.**

32.1 The Consultant shall comply with all applicable Federal, State, and local laws and regulations. The Consultant will comply with all applicable Owner policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the Consultant shall comply with the more restrictive law or regulation.

32.2 Consultant represents and warrants that Consultant is registered to do business in the State of California with the California Secretary of State.

32.3 The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Owner and Consultant, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

32.4 Consultant acknowledges that Owner may enter into agreements with other consultants for services similar to the services that are the subject of this Agreement or may have its own employees perform services similar to the services contemplated by this Agreement.

32.5 Without limiting Consultant's hold harmless, indemnification and insurance obligations set forth herein, in the event any claim or action is brought against Owner relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which Owner shall require.

32.6 As used in this Agreement, the term Consultant also includes Consultant's owners, officers, employees, representatives, and agents.

### 33. **ADDITIONAL FEDERAL REQUIREMENTS.**

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:

33.1 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 Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant shall ensure that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin. The Consultant 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, up-grading, demotion, or

transfer; recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in a conspicuous place, available to employees and applicants for employment, notices to be provided by Owner setting forth the provisions of this non-discriminating clause.

33.2 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).

33.3 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. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

33.4 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.

33.5 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.

33.6 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).

33.7 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).

33.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

33.9 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.

33.10 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.

33.11 Access to Records and Records Retention: Consultant, and any sub-consultants or sub-contractors, shall allow all duly authorized Federal, State, and/or Owner 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.

33.12 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.

33.13 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).

34. **NONLIABILITY OF OWNER OFFICIALS AND EMPLOYEES.**

No member, official employee or consultant of Owner shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by Owner 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.

35. **ENTIRE AGREEMENT.**

This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

36. **AUTHORITY TO SIGN.**

Consultant hereby represents that the persons executing this Agreement on behalf of Consultant have full authority to do so and to bind Consultant to perform pursuant to the terms and conditions of this Agreement.

37. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by this reference:

- i. Exhibit A – Scope of Services
- ii. Exhibit B – Fee Schedule
- iii. Exhibit C – Insurance Requirements for Consultants
- iv. Exhibit D – N/A
- v. Exhibit F – N/A
- vi. Exhibit E – N/A

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

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

**"CONSULTANT"**

**Gubb and Barshay LLP**, a California limited liability partnership

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

Name: Henry Loh II

Its: Partner

By: N/A \_\_\_\_\_

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

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

SIGNATURE OF ONE OF THE FOLLOWING:  
CORPORATE SECRETARY  
ASSISTANT SECRETARY, CFO,  
TREASURER  
OR ASSISTANT TREASURER  
(IF CONSULTING FIRM IS A CORPORATION)

**"Owner"**

**Lakehurst and Mosley LP**, a California limited partnership

**By: ICD Lakehurst LLC**, a California limited liability company, its managing general partner

**By: Island City Development**, a California non-profit public benefit corporation, its sole manger

By: \_\_\_\_\_  
Vanessa Cooper, President

**EXHIBIT A**  
**SCOPE OF SERVICES**

LIHTC and Real Estate Legal Services for North Housing PSH I.

Included services:

- (a) Services would generally commence with applications for funding sources, and terminate upon closing of construction financing.
- (b) Site control from a related party.
- (c) Preparing and negotiating the following organizational and affiliate financing documents:
  - (1) Resolutions for developer and its affiliates.
  - (2) Formation partnership agreement for the project partnership.
  - (3) Operating agreement of a single member LLC general partner, if applicable.
  - (4) Escrow instructions and acquisition closing documents.
  - (5) Review or drafting soft loan documents for up to 2 soft loans. To the extent there are additional financing sources, the Owner and Consultant can negotiate any appropriate adjustment in fees (for example, multiple loans from the Housing Authority and its affiliates using the same forms of documents may not require an adjustment or only a minimal adjustment, but additional loans from 3<sup>rd</sup> parties would likely require a material adjustment).
  - (6) Miscellaneous agreements that are not subject to material negotiation such as a general assignment of project documents, and construction contracts.
- (d) Review and negotiate the syndication partnership agreement and related equity documents.
- (e) Prepare, negotiate and issue to the investor a customary partnership enforceability opinion.
- (f) Review and negotiate loan documents and, if applicable, bond documents.
- (g) Prepare, negotiate and issue a customary debt enforceability opinion with respect to the bond construction and permanent loan.
- (h) Generally addressing concerns and requests of investors and lenders.
- (i) Assisting with financing applications and attorney letters and opinions in connection therewith; provided that if there are multiple rounds of applications with material changes to the financing structure or applications, then the fee may be equitably adjusted.
- (j) Includes the following services, provided that the fee may be equitably adjusted if there are prolonged or extensive negotiations with multiple drafts
  - (1) Easement or shared maintenance agreements
  - (2) Assisting with architect, general contractor and similar agreements – provided that the fee may be equitably adjusted due to prolonged or extensive negotiations with multiple drafts
  - (3) Basic CC&Rs for condo (not including formation and negotiation of condo associations).

## Excluded services:

1. Acquisition of real estate from 3<sup>rd</sup> parties.
2. Material environmental issues.
3. Federal or state securities filings, if applicable.
4. Negotiating joint venture agreements with co-developers.
5. Land use or entitlements.
6. Any material disputes with any party.
7. Material matters that arise after close of construction financing, including conversion.
8. Out-of-pocket expenses.
9. Travel time.



**EXHIBIT B**  
**FEE SCHEDULE**

Fixed fee of \$116,699 per transaction for LIHTC and Real Estate Legal Services based on the hourly rate listed below, escalating by 3% on 1/1/2025 and every year thereafter; provided that a credit for payment for services paid to Henry Loh's previous legal firm (CMPR) will be/has been provided by the Consultant equal to \$15,871.13 for North Housing PSH I.

The total fee of \$126,699 includes a \$10,000 as contingency for out-of-pocket expenses, as authorized in writing by Owner.

Partners: \$550 (affordable housing services)

Tax Partner: \$550 (tax advice); \$500 (other work)

Senior Associates: \$500 (affordable housing services, real estate work)

Mid-level Associates: \$350 (affordable housing services, real estate work)

Senior Project Coordinators: \$250 (affordable housing services)

Junior Project Coordinator: \$175 (affordable housing services)

**EXHIBIT C**  
**INSURANCE REQUIREMENTS FOR CONSULTANTS**  
 (Cyber/tech optional, not to be used for construction contracts)

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

**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 consultants 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 Consultant has no owned autos, hired (Code 8) and non-owned autos (Code 9) with limit no less than \$1 million for bodily injury and property damage. This requirement does not apply if no motor vehicles are used in providing services under the contract.
- **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.
- **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 in the aggregate. For consultants interacting with the public or with tenants, coverage must include coverage against discrimination, harassment, and fair housing claims under DFEH and HUD. If coverage is provided on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; insurance must be maintained, and evidence of coverage must be provided for at least five (5) years after completion of the contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
- **IF APPLICABLE: Cyber Liability Insurance:** Coverage is required if the vendor/consultant is accessing, collecting, storing, or transferring Personally identifiable Information or medical information on staff, tenant, applicants etc.). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs,

regulatory fines, and penalties as well as credit monitoring expenses with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. This requirement does not apply if the consultant will not be accessing or storing Owner data subject to privacy regulations under Federal or state law, including but not limited to PII, PCI, and PHI, providing software, or accessing Owner information technology systems.

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

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

#### **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 Consultant including materials, parts, or equipment furnished

in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

- **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects Owner, its directors, officers, officials, Board of Commissioners, Board of Directors, elected and appointed officials, employees, agents, representatives and volunteers. Any insurance or self-insurance maintained by Owner, 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 Owner.
- **Self-Insured Retentions:** Self-insured retentions must be declared and approved by Owner. Owner may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.
- **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 Owner.
- **Verification of Coverage:** Consultant shall furnish Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- **Subcontractors:** Consultant 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 Owner 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:** Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.

## CONSULTANT SERVICES CONTRACT

**THIS CONSULTANT SERVICES CONTRACT** ("Agreement"), entered into this 22nd day of January, 2024 ("Effective Date"), by and between MOSLEY AND MABUHAY LP, a California limited partnership (hereinafter referred to as "Owner"), and Gubb and Barshay LLP, a California limited liability partnership whose address is 235 Montgomery Street, Suite 1110 San Francisco, CA 94104, (hereinafter referred to as "Consultant"), is made with reference to the following:

### **RECITALS:**

A. Owner has determined that it requires professional services for Low-Income Housing Tax Credits (LIHTC) and Real Estate Transaction Legal services related to the North Housing PSH II project at North Housing Block A.

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

C. Consultant represents that it 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. Owner and Consultant desire to enter into an agreement to provide the subject services as discussed in more detail below.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. **TERM.**

The term of this Agreement shall commence on the Effective Date and end on December 31, 2026 unless extended, as discussed herein, or terminated earlier as provided in Paragraph 20 below ("Term"). The parties may choose by mutual agreement to extend the term of this Agreement up to a maximum of 60 months (5 year 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.**

2.1 Consultant shall provide the following services to Owner, (i) those services outlined and specified in the Scope of Services attached hereto as Exhibit A and incorporated herein by this reference; and (ii) those services outlined and specified in Consultant's accepted bid proposal attached hereto as Exhibit B and incorporated herein by this reference, all at the not to exceed fee stated in Paragraph 3 below. In the event of any inconsistencies between Consultant's accepted bid proposal and this Agreement, the terms of this Agreement shall govern.

2.2 Consultant represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement, and Owner relies upon this representation. Consultant shall perform to the satisfaction of Owner, and Consultant

shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant further represents and warrants to Owner that it has all licenses, permits, qualifications and approvals of whatever nature are legally required to practice its profession. Consultant further represents that it shall keep all such licenses and approvals in effect during the Term of this Agreement.

2.3 Consultant affirms that it is fully apprised of all of the work to be performed under this Agreement; and Consultant agrees it can properly perform this work for the fee stated in Paragraph 3. Consultant shall not perform services or provide products that are not set forth in this Agreement, unless by prior written request of Owner.

2.4 Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner.

2.5 Acceptance by Owner of Consultant's performance under this Agreement does not operate as a release of Consultant's responsibility for full compliance with the terms of this Agreement.

### 3. **COMPENSATION TO CONSULTANT.**

3.1 Owner shall pay the Consultant for services performed, products provided and expenses incurred for the Scope of Services defined in Exhibit A, and according to the Fee Schedule set forth in Exhibit B. Maximum payment by Owner to Consultant for the services provided herein shall not exceed One Hundred Thirty-Six Thousand Six Hundred Ninety-Nine Dollars and Zero Cents (\$136,699.00), including all expenses ("Contracted Amount"). Owner shall not be responsible for any fees or costs incurred above or beyond the aforementioned Contracted Amount and Owner shall have no obligation to purchase any specified amount of services or products, unless agreed to in writing by Owner pursuant to Paragraph 4 below. Consultant shall invoice Owner for the services performed pursuant to the Scope of Services attached hereto as Exhibit A, at the rates, inclusive of all taxes, insurance, benefits, wages, profit, overhead, and every other personnel cost borne by Consultant, set forth in the Scope of Services attached hereto as Exhibit A; provided, however, in no event shall any and all costs paid under this Agreement exceed the Contracted Amount.

3.2 CONSULTANT shall be paid only in accordance with an invoice submitted to Owner by Consultant. Owner shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to Consultant only after services have been rendered or delivery of materials or products, and acceptance has been made by Owner. For this Agreement, invoices can be submitted by email to primary contact (below) with a copy to [accountspayable@alamedahsg.org](mailto:accountspayable@alamedahsg.org).

Island City Development  
c/o: Lakehurst and Mosley LP  
701 Atlantic Avenue

Alameda, CA 94501-2161  
ATTN: Sylvia Martinez  
(510)747-4343  
Email: [smartinez@alamedahsg.org](mailto:smartinez@alamedahsg.org)

Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; itemization of the description of the work performed (hourly rate and extensions, if applicable), the date of performance, the associated time for completion; and an invoice total.

All contracts over \$25,000 are required to be paid via Electronic Funds Transfer (EFT)/Automated Clearing House (ACH) disbursements. The required forms can be found on the website or by contacting Finance at 510-747-4315.

4. **ALTERATION OR CHANGES TO THE AGREEMENT.**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. No additional services shall be performed by Consultant without a written amendment to this Agreement.

Consultant understands that Owner's Board of Directors, President, or designee, within their delegated authority, are the only authorized Owner representatives who may at any time, by written order, make any alterations within the general scope of this Agreement.

5. **INSPECTION OF SERVICES.**

All performances under this Agreement shall be subject to inspection by Owner. Consultant shall provide adequate cooperation to Owner representatives to permit him/her to determine Consultant's conformity with the terms of this Agreement. If any services performed or products provided by Consultant are not in conformance with the terms of this Agreement, Owner shall have the right to require Consultant to perform the services or provide the products in conformance with the terms of this Agreement at no additional cost to Owner. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, Owner shall have the right to: (1) require Consultant immediately to take all necessary steps to ensure future performance in conformity with the terms of this Agreement; and/or (2) if applicable, reduce the Contract Price to reflect the reduced value of the services performed or products provided. Owner may also terminate this Agreement for default and charge to Consultant any costs incurred by Owner because of Consultant's failure to perform.

Consultant shall establish adequate procedures for self-monitoring to ensure proper performance under this Agreement; and shall permit an Owner representative to monitor, assess or evaluate Consultant's performance under this Agreement at any time upon reasonable notice to Consultant.

6. **TIME IS OF THE ESSENCE.**

Consultant and Owner agree that time is of the essence regarding the performance of this Agreement.

7. **INDEPENDENT CONTRACTOR.**

The Consultant is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of Owner. It is expressly understood and agreed that the Consultant (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which Owner's employees are entitled, including but not limited to overtime, any retirement benefits, injury leave or unemployment insurance, workers' compensation coverage, vacation, and/or sick leave. 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 Consultant. Payments of the above items, if required, are the responsibility of Consultant. The manner and means of conducting the work are under the control of Consultant, 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 Consultant's services. There shall be no employer-employee relationship between the parties; and Consultant shall hold Owner harmless from any and all claims that may be made against Owner based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that Consultant in the performance of this Agreement is subject to the control or direction of Owner merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

Owner and Consultant 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.

**8. IMMIGRATION REFORM AND CONTROL ACT (IRCA).**

Consultant 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. Consultant shall indemnify and hold Owner harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

**9. NON-DISCRIMINATION.**

Consistent with Owner's policy that harassment and discrimination are unacceptable conduct and will not be tolerated, Consultant shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, sexual orientation, pregnancy, sex, age, gender identity, or marital status in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations. Consultant agrees that any and all violations of this provision shall constitute a breach of this Agreement.

**10. INDEMNIFICATION/HOLD HARMLESS.**



10.1 Consultant shall indemnify and hold harmless Owner, its affiliates, its directors, officers, Board of Commissioners, Board of Directors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any act, omission, or services of Consultant, its officers, employees, subcontractors, independent contractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death (Owner employees included), or any other element of damage of any kind or nature whatsoever, relating to or in any way connected with or arising from the performance of Consultant, its officers, employees, subcontractors, independent contractors, agents or representatives from this Agreement. Consultant shall defend, at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or legal action based upon such alleged acts or omissions.

10.2 With respect to any action or claim subject to indemnification herein by Consultant, Consultant shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Owner; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Consultant's indemnification to Indemnitees as set forth herein. Consultant's obligation hereunder shall be satisfied when Consultant has provided to Owner the appropriate form of dismissal relieving Owner from any liability for the action or claim involved.

10.3 The specified insurance limits required in this Agreement shall in no way limit or circumscribe Consultant's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

10.4 Owner does not, and shall not, waive any rights that it may possess against Consultant because of acceptance by Owner, or the deposit with Owner, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. The indemnity obligations of Consultant contained in this Agreement shall survive the termination and expiration of this Agreement.

## 11. **INSURANCE**

Without limiting or diminishing the Consultant's obligation to indemnify or hold the Owner harmless, Consultant 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, Consultant shall furnish Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Appendix C.

### A. **WAIVER OF SUBROGATION:**

Consultant hereby grants to Owner a waiver of any right to subrogation which any insurer of said Consultant may acquire against Owner by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary

to affect this waiver of subrogation, but this provision applies regardless of whether Owner has received a waiver of subrogation endorsement from the Insurer.

**B. FAILURE TO SECURE:**

If Consultant, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, Owner shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant 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. SUFFICIENCY OF INSURANCE:**

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

Consultant shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

Consultant agrees to notify Owner 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.

**12. CONFLICT OF INTEREST.**

No employee, agent, contractor, officer or official of Owner who exercises any functions or responsibilities with respect to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to it, shall obtain a personal or financial interest in or benefit from any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom they have family or business ties, during his or her tenure or for one (1) year thereafter. The term "contractor" also includes the employees, officers (including board members), agents and subcontractors of Consultant under this Agreement.

Consultant covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with Consultant's performance under this Agreement. Consultant further covenants that no person or subcontractor having any such interest shall be employed or retained by Consultant under this Agreement. Consultant agrees to inform Owner of all Consultant's interests, if any, which are or may be perceived as incompatible with the Owner's interests.

Consultant shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom Consultant is doing business or proposing to do business, in accomplishing the work under this Agreement.

Consultant or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to Owner employees.

In order to carry out the purposes of this section, Consultant shall incorporate, or cause to be incorporated, in all contracts and subcontracts relating to activities pursuant to this Agreement, a provision similar to that of this section.

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant further understands that it may be required to fill out a Statement of Economic Interests, a form provided by the California Fair Political Practices Commission, if the services provided under this Agreement require Consultant 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.

13. **PROHIBITION AGAINST ASSIGNMENTS.**

Consultant 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 Owner. 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 Consultant from Owner 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 Owner by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint venture or syndicate or co tenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

14. **SUBCONTRACTOR APPROVAL.**

Unless prior written consent from Owner 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 Consultant employs subcontractors, such subcontractors shall be required to furnish proof of worker's compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

15. **PERMITS AND LICENSES.**

Consultant shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to Owner, including, but not limited to a City of Alameda business license. Consultant warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Alameda, the City of Alameda and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement relative to the Scope of Services to be performed under Exhibit A, and that service(s) will be performed by properly trained and licensed staff.

**16. REPORTS.**

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 Consultant pursuant to or in connection with this Agreement shall be the exclusive property of Owner. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Owner 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 Owner, and all publication rights are reserved to Owner.

All Reports prepared by Consultant may be used by Owner in execution or implementation of:

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

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

All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on to both sides of the paper except for one original which shall be single sided.

No Report, information nor other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by Owner

**17. RECORDS.**

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Owner that relate to the performance of services under this Agreement. Consultant 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. Consultant shall provide free access to the representatives of Owner or its designees to such books and records at proper times; and gives Owner 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 five (5) years after receipt of final payment.

**18. 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 Consultant to Owner shall be addressed to Owner at:

Island City Development  
c/o: Mosley and Mabuhay LP  
701 Atlantic Avenue  
ALAMEDA CA 94501-2161  
Attention: Vanessa Cooper, President

All notices, demands, requests, or approvals from Owner to Consultant shall be addressed to Consultant at:

Gubb and Barshay LLP  
235 Montgomery Street, Suite 1110  
San Francisco, CA 94104  
Attention: Henry Loh II

19. **NO SMOKING, DRINKING OR RADIO USE.**

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

20. **TERMINATION.**

Owner may, by written notice to Consultant, terminate this Agreement in whole or in part at any time, with or without cause, upon seven (7) days advance written notice. Such termination may be for Owner's convenience or because of Consultant's failure to perform its duties and obligations under this Agreement including, but not limited to, the failure of Consultant to timely perform services pursuant to this Agreement, including, but not limited to the Scope of Services attached as Exhibit A.

20.1 Discontinuance of Services. Upon termination, Consultant shall, unless otherwise directed by the notice, discontinue all services, and deliver to Owner all data, estimates, graphs, summaries, reports, and other related materials as may have been prepared or accumulated by Consultant in performance of services, whether completed or in progress.

20.2 Effect of Termination for Convenience. If the termination is to be for the convenience of Owner, then Owner shall compensate Consultant for services satisfactorily provided through the date of termination. Consultant shall provide documentation deemed adequate by Owner to show the services actually completed by Consultant prior to the date of termination, no later than 30 days after the date of termination. This Agreement shall terminate on the date of the written Notice of Termination delivered to Consultant.

20.3 Effect of Termination for Cause. In the event Consultant hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant 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 Consultant from Owner of written notice of default, specifying the nature of such default and the steps necessary to cure such default, Owner may terminate the Agreement forthwith by giving to the Consultant written notice thereof. If the termination is due to the failure of Consultant to fulfill its obligations

under this Agreement, Consultant shall be compensated for those services which have been completed in accordance with this Agreement and accepted by the Owner. In such case, Owner may take over the work and prosecute the same to completion by contract or otherwise. Further, Consultant shall be liable to Owner for any reasonable additional costs incurred by Owner to revise work for which Owner has compensated Consultant under this Agreement, but which Owner has determined in its sole discretion needs to be revised in part or whole to complete the project. Prior to discontinuance of services, Owner may arrange for a meeting with Consultant to determine what steps, if any, Consultant can take to adequately fulfill its requirements under this Agreement. In its sole discretion, Owner may propose an adjustment to the terms and conditions of the Agreement, including the contract price. Such contract adjustments, if accepted in writing by the parties, shall become binding on Consultant and shall be performed as part of this Agreement. Termination of this Agreement for cause may be considered by Owner in determining whether to enter into future agreements with Consultant.

20.4 Notwithstanding any of the provisions of this Agreement, Consultant's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty, or a willful or material breach of this Agreement by Consultant, or in the event of Consultant's unwillingness or inability for any reason whatsoever to perform the duties hereunder, or if the Agreement is terminated pursuant to this Paragraph 20. In such event, Consultant shall not be entitled to any further compensation under this Agreement.

20.5 Cumulative Remedies. The rights and remedies of the parties provided in this Paragraph are in addition to any other rights and remedies provided by law, equity or under this Agreement.

21. **FORCE MAJEURE.**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as Acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply, provided the other party receives written notice of such force majeure event no later than fourteen (14) calendar days after commencement of such force majeure event.

22. **COMPLIANCES.**

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

23. **GOVERNING LAW; SEVERABILITY.**

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, and the parties

waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

24. **NONCONFORMING PAYMENTS.**

In the event Consultant receives payment under this Agreement which is later disallowed by Owner for nonconformance with the terms of the Agreement, Consultant shall promptly refund the disallowed amount to Owner on request; or at its option Owner may offset the amount disallowed from any payment due to Consultant.

25. **NO PARTIAL DELIVERY OF SERVICES.**

Consultant shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

26. **LABOR STANDARDS.**

Consultant shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

27. **SOCIAL MEDIA/ADVERTISEMENT.**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, or displayed any information, 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 Owner to do otherwise. This prohibition includes, but is not limited to, posting any information as to this Agreement and Consultant's relationship with Owner on Facebook, Twitter, LinkedIn, Yelp, Instagram and any other social media.

28. **CONFIDENTIALITY.**

28.1. **Definition.** Consultant shall observe all Federal, State and Owner regulations concerning confidentiality of records. Consultant shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: any information or data obtained by Consultant relating to Owner clients and tenants and any opinions and conclusions based upon such information, unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; Owner information or data which is not subject to public disclosure; Owner operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement, and any personally identifiable information protected under The Privacy Act of 1974(5 U.S.C. Section 552a), Section 6 of the Housing Act of 1937, The Freedom of Information Act (FOIA), 5 U.S.C. § 552, Section 208 of The E-Government Act, and HUD Notice PIH 2-15-06 issued on April 23, 2015.

28.2. **Nondisclosure and Nonuse Obligation.** Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner. Consultant agrees that it will not use, disseminate, or in any way disclose any Confidential Information to any person, firm, or business, except that Consultant may use Confidential Information to the extent necessary to perform its obligations under this Agreement. Consultant agrees that it shall treat all Confidential Information with the same degree of care as the Consultant accords to its own Confidential Information, but in no case less than reasonable care. Consultant agrees that it shall disclose Confidential Information only to those of its employees who need to know such information, and the Consultant certifies that such employees have previously agreed, as a condition of employment, to be bound by terms and conditions applicable to Consultant under this Agreement. Consultant shall immediately give notice to Owner of any unauthorized use or disclosure of Confidential Information. For agreements involving information technology or access to agency data, the consultant shall be expected to use the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the agency's information, as it uses to protect its own, including standard anti-virus/malware deployment.

**28.3. Exclusions from Nondisclosure and Nonuse Obligations.** The obligations under 28.2 ("Nondisclosure and Nonuse Obligation") shall not apply to such portion that Consultant 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.

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

**29. WAIVER.**

Any waiver by Owner of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of Owner to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing Owner from enforcement of the terms of this Agreement.

**30. 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

**31. ADMINISTRATION.**

The Owner President (or designee) shall administer this Agreement on behalf of Owner and may issue all consents, approvals, directives, and agreements on behalf of



Owner called for by this Agreement, except as otherwise expressly provided for in this Agreement.

### 32. **GENERAL.**

32.1 The Consultant shall comply with all applicable Federal, State, and local laws and regulations. The Consultant will comply with all applicable Owner policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the Consultant shall comply with the more restrictive law or regulation.

32.2 Consultant represents and warrants that Consultant is registered to do business in the State of California with the California Secretary of State.

32.3 The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Owner and Consultant, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

32.4 Consultant acknowledges that Owner may enter into agreements with other consultants for services similar to the services that are the subject of this Agreement or may have its own employees perform services similar to the services contemplated by this Agreement.

32.5 Without limiting Consultant's hold harmless, indemnification and insurance obligations set forth herein, in the event any claim or action is brought against Owner relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which Owner shall require.

32.6 As used in this Agreement, the term Consultant also includes Consultant's owners, officers, employees, representatives, and agents.

### 33. **ADDITIONAL FEDERAL REQUIREMENTS.**

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:

33.1 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 Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant shall ensure that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin. The Consultant 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, up-grading, demotion, or

transfer; recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in a conspicuous place, available to employees and applicants for employment, notices to be provided by Owner setting forth the provisions of this non-discriminating clause.

33.2 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).

33.3 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. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

33.4 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.

33.5 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.

33.6 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).

33.7 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).

33.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

33.9 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.

33.10 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.

33.11 Access to Records and Records Retention: Consultant, and any sub-consultants or sub-contractors, shall allow all duly authorized Federal, State, and/or Owner 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.

33.12 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.

33.13 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).

34. **NONLIABILITY OF OWNER OFFICIALS AND EMPLOYEES.**

No member, official employee or consultant of Owner shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by Owner 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.

35. **ENTIRE AGREEMENT.**

This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

36. **AUTHORITY TO SIGN.**

Consultant hereby represents that the persons executing this Agreement on behalf of Consultant have full authority to do so and to bind Consultant to perform pursuant to the terms and conditions of this Agreement.

37. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by this reference:

- i. Exhibit A – Scope of Services
- ii. Exhibit B – Fee Schedule
- iii. Exhibit C – Insurance Requirements for Consultants
- iv. Exhibit D – N/A
- v. Exhibit F – N/A
- vi. Exhibit E – N/A

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

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

**"CONSULTANT"**

**Gubb and Barshay LLP**, a California limited liability partnership

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

Name: Henry Loh II

Its: Partner

By: N/A \_\_\_\_\_

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

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

SIGNATURE OF ONE OF THE FOLLOWING:  
CORPORATE SECRETARY  
ASSISTANT SECRETARY, CFO,  
TREASURER  
OR ASSISTANT TREASURER  
(IF CONSULTING FIRM IS A CORPORATION)

**"Owner"**

**Mosley and Mabuhay LP**, a California limited partnership

**By: ICD Mosley LLC**, a California limited liability company, its managing general partner

**By: Island City Development**, a California non-profit public benefit corporation, its sole manger

By: \_\_\_\_\_  
Vanessa Cooper, President

**EXHIBIT A**  
**SCOPE OF SERVICES**

LIHTC and Real Estate Legal Services for North Housing PSH II.

Included services:

- (a) Services would generally commence with applications for funding sources, and terminate upon closing of construction financing.
- (b) Site control from a related party.
- (c) Preparing and negotiating the following organizational and affiliate financing documents:
  - (1) Resolutions for developer and its affiliates.
  - (2) Formation partnership agreement for the project partnership.
  - (3) Operating agreement of a single member LLC general partner, if applicable.
  - (4) Escrow instructions and acquisition closing documents.
  - (5) Review or drafting soft loan documents for up to 2 soft loans. To the extent there are additional financing sources, the Owner and Consultant can negotiate any appropriate adjustment in fees (for example, multiple loans from the Housing Authority and its affiliates using the same forms of documents may not require an adjustment or only a minimal adjustment, but additional loans from 3<sup>rd</sup> parties would likely require a material adjustment).
  - (6) Miscellaneous agreements that are not subject to material negotiation such as a general assignment of project documents, and construction contracts.
- (d) Review and negotiate the syndication partnership agreement and related equity documents.
- (e) Prepare, negotiate and issue to the investor a customary partnership enforceability opinion.
- (f) Review and negotiate loan documents and, if applicable, bond documents.
- (g) Prepare, negotiate and issue a customary debt enforceability opinion with respect to the bond construction and permanent loan.
- (h) Generally addressing concerns and requests of investors and lenders.
- (i) Assisting with financing applications and attorney letters and opinions in connection therewith; provided that if there are multiple rounds of applications with material changes to the financing structure or applications, then the fee may be equitably adjusted.
- (j) Includes the following services, provided that the fee may be equitably adjusted if there are prolonged or extensive negotiations with multiple drafts
  - (1) Easement or shared maintenance agreements
  - (2) Assisting with architect, general contractor and similar agreements – provided that the fee may be equitably adjusted due to prolonged or extensive negotiations with multiple drafts
  - (3) Basic CC&Rs for condo (not including formation and negotiation of condo associations).

## Excluded services:

1. Acquisition of real estate from 3<sup>rd</sup> parties.
2. Material environmental issues.
3. Federal or state securities filings, if applicable.
4. Negotiating joint venture agreements with co-developers.
5. Land use or entitlements.
6. Any material disputes with any party.
7. Material matters that arise after close of construction financing, including conversion.
8. Out-of-pocket expenses.
9. Travel time.



**EXHIBIT B**  
**FEE SCHEDULE**

Fixed fee of \$116,699 per transaction for LIHTC and Real Estate Legal Services, escalating by 3% on 1/1/2025 and every year thereafter; provided that a credit for payment for services paid to Henry Loh's previous legal firm (CMPR) will be/has been provided by the Consultant equal to \$8,473.13 for North Housing PSH II.

The total fee of \$136,699 includes a \$20,000 contingency for out-of-pocket expenses and permanent loan conversion, as authorized in writing by Owner.

Partners: \$550 (affordable housing services)

Tax Partner: \$550 (tax advice); \$500 (other work)

Senior Associates: \$500 (affordable housing services, real estate work)

Mid-level Associates: \$350 (affordable housing services, real estate work)

Senior Project Coordinators: \$250 (affordable housing services)

Junior Project Coordinator: \$175 (affordable housing services)

**EXHIBIT C**  
**INSURANCE REQUIREMENTS FOR CONSULTANTS**  
 (Cyber/tech optional, not to be used for construction contracts)

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

**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 consultants 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 Consultant has no owned autos, hired (Code 8) and non-owned autos (Code 9) with limit no less than \$1 million for bodily injury and property damage. This requirement does not apply if no motor vehicles are used in providing services under the contract.
- **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.
- **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 in the aggregate. For consultants interacting with the public or with tenants, coverage must include coverage against discrimination, harassment, and fair housing claims under DFEH and HUD. If coverage is provided on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; insurance must be maintained, and evidence of coverage must be provided for at least five (5) years after completion of the contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
- **IF APPLICABLE: Cyber Liability Insurance:** Coverage is required if the vendor/consultant is accessing, collecting, storing, or transferring Personally identifiable Information or medical information on staff, tenant, applicants etc.). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs,

regulatory fines, and penalties as well as credit monitoring expenses with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. This requirement does not apply if the consultant will not be accessing or storing Owner data subject to privacy regulations under Federal or state law, including but not limited to PII, PCI, and PHI, providing software, or accessing Owner information technology systems.

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

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

#### **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 Consultant including materials, parts, or equipment furnished

in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

- **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects Owner, its directors, officers, officials, Board of Commissioners, Board of Directors, elected and appointed officials, employees, agents, representatives and volunteers. Any insurance or self-insurance maintained by Owner, 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 Owner.
- **Self-Insured Retentions:** Self-insured retentions must be declared and approved by Owner. Owner may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.
- **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 Owner.
- **Verification of Coverage:** Consultant shall furnish Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- **Subcontractors:** Consultant 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 Owner 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:** Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.

## CONSULTANT SERVICES CONTRACT

**THIS CONSULTANT SERVICES CONTRACT** ("Agreement"), entered into this 22nd day of January, 2024 ("Effective Date"), by and between MABUHAY AND LAKEHURST LP, a California limited partnership (hereinafter referred to as "Owner"), and Gubb and Barshay LLP, a California limited liability partnership whose address is 235 Montgomery Street, Suite 1110 San Francisco, CA 94104, (hereinafter referred to as "Consultant"), is made with reference to the following:

### **RECITALS:**

A. Owner has determined that it requires professional services for Low-Income Housing Tax Credits (LIHTC) and Real Estate Transaction Legal services related to the North Housing Senior Apartments project at North Housing Block A.

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

C. Consultant represents that it 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. Owner and Consultant desire to enter into an agreement to provide the subject services as discussed in more detail below.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. **TERM.**

The term of this Agreement shall commence on the Effective Date and end on December 31, 2026 unless extended, as discussed herein, or terminated earlier as provided in Paragraph 20 below ("Term"). The parties may choose by mutual agreement to extend the term of this Agreement up to a maximum of 60 months (5 year 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.**

2.1 Consultant shall provide the following services to Owner, (i) those services outlined and specified in the Scope of Services attached hereto as Exhibit A and incorporated herein by this reference; and (ii) those services outlined and specified in Consultant's accepted bid proposal attached hereto as Exhibit B and incorporated herein by this reference, all at the not to exceed fee stated in Paragraph 3 below. In the event of any inconsistencies between Consultant's accepted bid proposal and this Agreement, the terms of this Agreement shall govern.

2.2 Consultant represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement, and Owner relies upon this representation. Consultant shall perform to the satisfaction of Owner, and Consultant

shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant further represents and warrants to Owner that it has all licenses, permits, qualifications and approvals of whatever nature are legally required to practice its profession. Consultant further represents that it shall keep all such licenses and approvals in effect during the Term of this Agreement.

2.3 Consultant affirms that it is fully apprised of all of the work to be performed under this Agreement; and Consultant agrees it can properly perform this work for the fee stated in Paragraph 3. Consultant shall not perform services or provide products that are not set forth in this Agreement, unless by prior written request of Owner.

2.4 Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner.

2.5 Acceptance by Owner of Consultant's performance under this Agreement does not operate as a release of Consultant's responsibility for full compliance with the terms of this Agreement.

### 3. **COMPENSATION TO CONSULTANT.**

3.1 Owner shall pay the Consultant for services performed, products provided and expenses incurred for the Scope of Services defined in Exhibit A, and according to the Fee Schedule set forth in Exhibit B. Maximum payment by Owner to Consultant for the services provided herein shall not exceed One Hundred Thirty-Six Thousand Six Hundred Ninety-Nine Dollars and Zero Cents (\$136,699.00), including all expenses ("Contracted Amount"). Owner shall not be responsible for any fees or costs incurred above or beyond the aforementioned Contracted Amount and Owner shall have no obligation to purchase any specified amount of services or products, unless agreed to in writing by Owner pursuant to Paragraph 4 below. Consultant shall invoice Owner for the services performed pursuant to the Scope of Services attached hereto as Exhibit A, at the rates, inclusive of all taxes, insurance, benefits, wages, profit, overhead, and every other personnel cost borne by Consultant, set forth in the Scope of Services attached hereto as Exhibit A; provided, however, in no event shall any and all costs paid under this Agreement exceed the Contracted Amount.

3.2 CONSULTANT shall be paid only in accordance with an invoice submitted to Owner by Consultant. Owner shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to Consultant only after services have been rendered or delivery of materials or products, and acceptance has been made by Owner. For this Agreement, invoices can be submitted by email to primary contact (below) with a copy to [accountspayable@alamedahsg.org](mailto:accountspayable@alamedahsg.org).

Island City Development  
c/o: Mabuhay and Lakehurst LP  
701 Atlantic Avenue

Alameda, CA 94501-2161  
ATTN: Sylvia Martinez  
(510)747-4343  
Email: [smartinez@alamedahsg.org](mailto:smartinez@alamedahsg.org)

Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; itemization of the description of the work performed (hourly rate and extensions, if applicable), the date of performance, the associated time for completion; and an invoice total.

All contracts over \$25,000 are required to be paid via Electronic Funds Transfer (EFT)/Automated Clearing House (ACH) disbursements. The required forms can be found on the website or by contacting Finance at 510-747-4315.

4. **ALTERATION OR CHANGES TO THE AGREEMENT.**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. No additional services shall be performed by Consultant without a written amendment to this Agreement.

Consultant understands that Owner's Board of Directors, President, or designee, within their delegated authority, are the only authorized Owner representatives who may at any time, by written order, make any alterations within the general scope of this Agreement.

5. **INSPECTION OF SERVICES.**

All performances under this Agreement shall be subject to inspection by Owner. Consultant shall provide adequate cooperation to Owner representatives to permit him/her to determine Consultant's conformity with the terms of this Agreement. If any services performed or products provided by Consultant are not in conformance with the terms of this Agreement, Owner shall have the right to require Consultant to perform the services or provide the products in conformance with the terms of this Agreement at no additional cost to Owner. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, Owner shall have the right to: (1) require Consultant immediately to take all necessary steps to ensure future performance in conformity with the terms of this Agreement; and/or (2) if applicable, reduce the Contract Price to reflect the reduced value of the services performed or products provided. Owner may also terminate this Agreement for default and charge to Consultant any costs incurred by Owner because of Consultant's failure to perform.

Consultant shall establish adequate procedures for self-monitoring to ensure proper performance under this Agreement; and shall permit an Owner representative to monitor, assess or evaluate Consultant's performance under this Agreement at any time upon reasonable notice to Consultant.

6. **TIME IS OF THE ESSENCE.**

Consultant and Owner agree that time is of the essence regarding the performance of this Agreement.

7. **INDEPENDENT CONTRACTOR.**

The Consultant is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of Owner. It is expressly understood and agreed that the Consultant (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which Owner's employees are entitled, including but not limited to overtime, any retirement benefits, injury leave or unemployment insurance, workers' compensation coverage, vacation, and/or sick leave. 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 Consultant. Payments of the above items, if required, are the responsibility of Consultant. The manner and means of conducting the work are under the control of Consultant, 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 Consultant's services. There shall be no employer-employee relationship between the parties; and Consultant shall hold Owner harmless from any and all claims that may be made against Owner based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that Consultant in the performance of this Agreement is subject to the control or direction of Owner merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

Owner and Consultant 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.

**8. IMMIGRATION REFORM AND CONTROL ACT (IRCA).**

Consultant 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. Consultant shall indemnify and hold Owner harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

**9. NON-DISCRIMINATION.**

Consistent with Owner's policy that harassment and discrimination are unacceptable conduct and will not be tolerated, Consultant shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, sexual orientation, pregnancy, sex, age, gender identity, or marital status in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations. Consultant agrees that any and all violations of this provision shall constitute a breach of this Agreement.

**10. INDEMNIFICATION/HOLD HARMLESS.**



10.1 Consultant shall indemnify and hold harmless Owner, its affiliates, its directors, officers, Board of Commissioners, Board of Directors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any act, omission, or services of Consultant, its officers, employees, subcontractors, independent contractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death (Owner employees included), or any other element of damage of any kind or nature whatsoever, relating to or in any way connected with or arising from the performance of Consultant, its officers, employees, subcontractors, independent contractors, agents or representatives from this Agreement. Consultant shall defend, at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or legal action based upon such alleged acts or omissions.

10.2 With respect to any action or claim subject to indemnification herein by Consultant, Consultant shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Owner; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Consultant's indemnification to Indemnitees as set forth herein. Consultant's obligation hereunder shall be satisfied when Consultant has provided to Owner the appropriate form of dismissal relieving Owner from any liability for the action or claim involved.

10.3 The specified insurance limits required in this Agreement shall in no way limit or circumscribe Consultant's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

10.4 Owner does not, and shall not, waive any rights that it may possess against Consultant because of acceptance by Owner, or the deposit with Owner, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. The indemnity obligations of Consultant contained in this Agreement shall survive the termination and expiration of this Agreement.

## 11. **INSURANCE**.

Without limiting or diminishing the Consultant's obligation to indemnify or hold the Owner harmless, Consultant 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, Consultant shall furnish Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Appendix C.

### A. **WAIVER OF SUBROGATION:**

Consultant hereby grants to Owner a waiver of any right to subrogation which any insurer of said Consultant may acquire against Owner by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary

to affect this waiver of subrogation, but this provision applies regardless of whether Owner has received a waiver of subrogation endorsement from the Insurer.

**B. FAILURE TO SECURE:**

If Consultant, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, Owner shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant 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. SUFFICIENCY OF INSURANCE:**

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

Consultant shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

Consultant agrees to notify Owner 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.

**12. CONFLICT OF INTEREST.**

No employee, agent, contractor, officer or official of Owner who exercises any functions or responsibilities with respect to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to it, shall obtain a personal or financial interest in or benefit from any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom they have family or business ties, during his or her tenure or for one (1) year thereafter. The term "contractor" also includes the employees, officers (including board members), agents and subcontractors of Consultant under this Agreement.

Consultant covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with Consultant's performance under this Agreement. Consultant further covenants that no person or subcontractor having any such interest shall be employed or retained by Consultant under this Agreement. Consultant agrees to inform Owner of all Consultant's interests, if any, which are or may be perceived as incompatible with the Owner's interests.

Consultant shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom Consultant is doing business or proposing to do business, in accomplishing the work under this Agreement.

Consultant or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to Owner employees.

In order to carry out the purposes of this section, Consultant shall incorporate, or cause to be incorporated, in all contracts and subcontracts relating to activities pursuant to this Agreement, a provision similar to that of this section.

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant further understands that it may be required to fill out a Statement of Economic Interests, a form provided by the California Fair Political Practices Commission, if the services provided under this Agreement require Consultant 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.

13. **PROHIBITION AGAINST ASSIGNMENTS.**

Consultant 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 Owner. 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 Consultant from Owner 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 Owner by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint venture or syndicate or co tenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

14. **SUBCONTRACTOR APPROVAL.**

Unless prior written consent from Owner 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 Consultant employs subcontractors, such subcontractors shall be required to furnish proof of worker's compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

15. **PERMITS AND LICENSES.**

Consultant shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to Owner, including, but not limited to a City of Alameda business license. Consultant warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Alameda, the City of Alameda and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement relative to the Scope of Services to be performed under Exhibit A, and that service(s) will be performed by properly trained and licensed staff.

**16. REPORTS.**

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 Consultant pursuant to or in connection with this Agreement shall be the exclusive property of Owner. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Owner 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 Owner, and all publication rights are reserved to Owner.

All Reports prepared by Consultant may be used by Owner in execution or implementation of:

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

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

All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on to both sides of the paper except for one original which shall be single sided.

No Report, information nor other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by Owner

**17. RECORDS.**

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Owner that relate to the performance of services under this Agreement. Consultant 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. Consultant shall provide free access to the representatives of Owner or its designees to such books and records at proper times; and gives Owner 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 five (5) years after receipt of final payment.

**18. 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 Consultant to Owner shall be addressed to Owner at:

Island City Development  
c/o: Lakehurst and Mosley LP  
701 Atlantic Avenue  
ALAMEDA CA 94501-2161  
Attention: Vanessa Cooper, President

All notices, demands, requests, or approvals from Owner to Consultant shall be addressed to Consultant at:

Gubb and Barshay LLP  
235 Montgomery Street, Suite 1110  
San Francisco, CA 94104  
Attention: Henry Loh II

19. **NO SMOKING, DRINKING OR RADIO USE.**

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

20. **TERMINATION.**

Owner may, by written notice to Consultant, terminate this Agreement in whole or in part at any time, with or without cause, upon seven (7) days advance written notice. Such termination may be for Owner's convenience or because of Consultant's failure to perform its duties and obligations under this Agreement including, but not limited to, the failure of Consultant to timely perform services pursuant to this Agreement, including, but not limited to the Scope of Services attached as Exhibit A.

20.1 Discontinuance of Services. Upon termination, Consultant shall, unless otherwise directed by the notice, discontinue all services, and deliver to Owner all data, estimates, graphs, summaries, reports, and other related materials as may have been prepared or accumulated by Consultant in performance of services, whether completed or in progress.

20.2 Effect of Termination for Convenience. If the termination is to be for the convenience of Owner, then Owner shall compensate Consultant for services satisfactorily provided through the date of termination. Consultant shall provide documentation deemed adequate by Owner to show the services actually completed by Consultant prior to the date of termination, no later than 30 days after the date of termination. This Agreement shall terminate on the date of the written Notice of Termination delivered to Consultant.

20.3 Effect of Termination for Cause. In the event Consultant hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant 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 Consultant from Owner of written notice of default, specifying the nature of such default and the steps necessary to cure such default, Owner may terminate the Agreement forthwith by giving to the Consultant written notice thereof. If the termination is due to the failure of Consultant to fulfill its obligations

under this Agreement, Consultant shall be compensated for those services which have been completed in accordance with this Agreement and accepted by the Owner. In such case, Owner may take over the work and prosecute the same to completion by contract or otherwise. Further, Consultant shall be liable to Owner for any reasonable additional costs incurred by Owner to revise work for which Owner has compensated Consultant under this Agreement, but which Owner has determined in its sole discretion needs to be revised in part or whole to complete the project. Prior to discontinuance of services, Owner may arrange for a meeting with Consultant to determine what steps, if any, Consultant can take to adequately fulfill its requirements under this Agreement. In its sole discretion, Owner may propose an adjustment to the terms and conditions of the Agreement, including the contract price. Such contract adjustments, if accepted in writing by the parties, shall become binding on Consultant and shall be performed as part of this Agreement. Termination of this Agreement for cause may be considered by Owner in determining whether to enter into future agreements with Consultant.

20.4 Notwithstanding any of the provisions of this Agreement, Consultant's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty, or a willful or material breach of this Agreement by Consultant, or in the event of Consultant's unwillingness or inability for any reason whatsoever to perform the duties hereunder, or if the Agreement is terminated pursuant to this Paragraph 20. In such event, Consultant shall not be entitled to any further compensation under this Agreement.

20.5 Cumulative Remedies. The rights and remedies of the parties provided in this Paragraph are in addition to any other rights and remedies provided by law, equity or under this Agreement.

21. **FORCE MAJEURE.**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as Acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply, provided the other party receives written notice of such force majeure event no later than fourteen (14) calendar days after commencement of such force majeure event.

22. **COMPLIANCES.**

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

23. **GOVERNING LAW; SEVERABILITY.**

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, and the parties

waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

24. **NONCONFORMING PAYMENTS.**

In the event Consultant receives payment under this Agreement which is later disallowed by Owner for nonconformance with the terms of the Agreement, Consultant shall promptly refund the disallowed amount to Owner on request; or at its option Owner may offset the amount disallowed from any payment due to Consultant.

25. **NO PARTIAL DELIVERY OF SERVICES.**

Consultant shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

26. **LABOR STANDARDS.**

Consultant shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

27. **SOCIAL MEDIA/ADVERTISEMENT.**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, or displayed any information, 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 Owner to do otherwise. This prohibition includes, but is not limited to, posting any information as to this Agreement and Consultant's relationship with Owner on Facebook, Twitter, LinkedIn, Yelp, Instagram and any other social media.

28. **CONFIDENTIALITY.**

28.1. **Definition.** Consultant shall observe all Federal, State and Owner regulations concerning confidentiality of records. Consultant shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: any information or data obtained by Consultant relating to Owner clients and tenants and any opinions and conclusions based upon such information, unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; Owner information or data which is not subject to public disclosure; Owner operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement, and any personally identifiable information protected under The Privacy Act of 1974(5 U.S.C. Section 552a), Section 6 of the Housing Act of 1937, The Freedom of Information Act (FOIA), 5 U.S.C. § 552, Section 208 of The E-Government Act, and HUD Notice PIH 2-15-06 issued on April 23, 2015.

28.2. **Nondisclosure and Nonuse Obligation.** Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner. Consultant agrees that it will not use, disseminate, or in any way disclose any Confidential Information to any person, firm, or business, except that Consultant may use Confidential Information to the extent necessary to perform its obligations under this Agreement. Consultant agrees that it shall treat all Confidential Information with the same degree of care as the Consultant accords to its own Confidential Information, but in no case less than reasonable care. Consultant agrees that it shall disclose Confidential Information only to those of its employees who need to know such information, and the Consultant certifies that such employees have previously agreed, as a condition of employment, to be bound by terms and conditions applicable to Consultant under this Agreement. Consultant shall immediately give notice to Owner of any unauthorized use or disclosure of Confidential Information. For agreements involving information technology or access to agency data, the consultant shall be expected to use the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the agency's information, as it uses to protect its own, including standard anti-virus/malware deployment.

**28.3. Exclusions from Nondisclosure and Nonuse Obligations.** The obligations under 28.2 ("Nondisclosure and Nonuse Obligation") shall not apply to such portion that Consultant 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.

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

**29. WAIVER.**

Any waiver by Owner of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of Owner to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing Owner from enforcement of the terms of this Agreement.

**30. 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

**31. ADMINISTRATION.**

The Owner President (or designee) shall administer this Agreement on behalf of Owner and may issue all consents, approvals, directives, and agreements on behalf of



Owner called for by this Agreement, except as otherwise expressly provided for in this Agreement.

### 32. **GENERAL.**

32.1 The Consultant shall comply with all applicable Federal, State, and local laws and regulations. The Consultant will comply with all applicable Owner policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the Consultant shall comply with the more restrictive law or regulation.

32.2 Consultant represents and warrants that Consultant is registered to do business in the State of California with the California Secretary of State.

32.3 The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Owner and Consultant, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

32.4 Consultant acknowledges that Owner may enter into agreements with other consultants for services similar to the services that are the subject of this Agreement or may have its own employees perform services similar to the services contemplated by this Agreement.

32.5 Without limiting Consultant's hold harmless, indemnification and insurance obligations set forth herein, in the event any claim or action is brought against Owner relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which Owner shall require.

32.6 As used in this Agreement, the term Consultant also includes Consultant's owners, officers, employees, representatives, and agents.

### 33. **ADDITIONAL FEDERAL REQUIREMENTS.**

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:

33.1 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 Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant shall ensure that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin. The Consultant 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, up-grading, demotion, or

transfer; recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in a conspicuous place, available to employees and applicants for employment, notices to be provided by Owner setting forth the provisions of this non-discriminating clause.

33.2 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).

33.3 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. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

33.4 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.

33.5 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.

33.6 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).

33.7 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).

33.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

33.9 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.

33.10 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.

33.11 Access to Records and Records Retention: Consultant, and any sub-consultants or sub-contractors, shall allow all duly authorized Federal, State, and/or Owner 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.

33.12 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.

33.13 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).

34. **NONLIABILITY OF OWNER OFFICIALS AND EMPLOYEES.**

No member, official employee or consultant of Owner shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by Owner 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.

35. **ENTIRE AGREEMENT.**

This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

36. **AUTHORITY TO SIGN.**

Consultant hereby represents that the persons executing this Agreement on behalf of Consultant have full authority to do so and to bind Consultant to perform pursuant to the terms and conditions of this Agreement.

37. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by this reference:

- i. Exhibit A – Scope of Services
- ii. Exhibit B – Fee Schedule
- iii. Exhibit C – Insurance Requirements for Consultants
- iv. Exhibit D – N/A
- v. Exhibit F – N/A
- vi. Exhibit E – N/A

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[SIGNATURES ON FOLLOWING PAGE]

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

**"CONSULTANT"**

**Gubb and Barshay LLP**, a California limited liability partnership

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

Name: Henry Loh II

Its: Partner

By: N/A \_\_\_\_\_

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

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

SIGNATURE OF ONE OF THE FOLLOWING:  
CORPORATE SECRETARY  
ASSISTANT SECRETARY, CFO,  
TREASURER  
OR ASSISTANT TREASURER  
(IF CONSULTING FIRM IS A CORPORATION)

**"Owner"**

**Mabuhay and Lakehurst LP**, a California limited partnership

**By: ICD Mabuhay LLC**, a California limited liability company, its managing general partner

**By: Island City Development**, a California non-profit public benefit corporation, its sole manger

By: \_\_\_\_\_  
Vanessa Cooper, President

**EXHIBIT A**  
**SCOPE OF SERVICES**

LIHTC and Real Estate Legal Services for North Housing Senior Apartments.

Included services:

- (a) Services would generally commence with applications for funding sources, and terminate upon closing of construction financing.
- (b) Site control from a related party.
- (c) Preparing and negotiating the following organizational and affiliate financing documents:
  - (1) Resolutions for developer and its affiliates.
  - (2) Formation partnership agreement for the project partnership.
  - (3) Operating agreement of a single member LLC general partner, if applicable.
  - (4) Escrow instructions and acquisition closing documents.
  - (5) Review or drafting soft loan documents for up to 2 soft loans. To the extent there are additional financing sources, the Owner and Consultant can negotiate any appropriate adjustment in fees (for example, multiple loans from the Housing Authority and its affiliates using the same forms of documents may not require an adjustment or only a minimal adjustment, but additional loans from 3<sup>rd</sup> parties would likely require a material adjustment).
  - (6) Miscellaneous agreements that are not subject to material negotiation such as a general assignment of project documents, and construction contracts.
- (d) Review and negotiate the syndication partnership agreement and related equity documents.
- (e) Prepare, negotiate and issue to the investor a customary partnership enforceability opinion.
- (f) Review and negotiate loan documents and, if applicable, bond documents.
- (g) Prepare, negotiate and issue a customary debt enforceability opinion with respect to the bond construction and permanent loan.
- (h) Generally addressing concerns and requests of investors and lenders.
- (i) Assisting with financing applications and attorney letters and opinions in connection therewith; provided that if there are multiple rounds of applications with material changes to the financing structure or applications, then the fee may be equitably adjusted.
- (j) Includes the following services, provided that the fee may be equitably adjusted if there are prolonged or extensive negotiations with multiple drafts
  - (1) Easement or shared maintenance agreements
  - (2) Assisting with architect, general contractor and similar agreements – provided that the fee may be equitably adjusted due to prolonged or extensive negotiations with multiple drafts
  - (3) Basic CC&Rs for condo (not including formation and negotiation of condo associations).

## Excluded services:

1. Acquisition of real estate from 3<sup>rd</sup> parties.
2. Material environmental issues.
3. Federal or state securities filings, if applicable.
4. Negotiating joint venture agreements with co-developers.
5. Land use or entitlements.
6. Any material disputes with any party.
7. Material matters that arise after close of construction financing, including conversion.
8. Out-of-pocket expenses.
9. Travel time.



**EXHIBIT B**  
**FEE SCHEDULE**

Fixed fee of \$116,699 per transaction for LIHTC and Real Estate Legal Services, escalating by 3% on 1/1/2025 and every year thereafter; provided that a credit for payment for services paid to Henry Loh's previous legal firm (CMPR) will be/has been provided by the Consultant equal to \$15,249.55 for North Housing Senior Apartments.

The total fee of \$136,699 includes a \$20,000 contingency for out-of-pocket expenses and permanent loan conversion, as authorized in writing by Owner.

Partners: \$550 (affordable housing services)

Tax Partner: \$550 (tax advice); \$500 (other work)

Senior Associates: \$500 (affordable housing services, real estate work)

Mid-level Associates: \$350 (affordable housing services, real estate work)

Senior Project Coordinators: \$250 (affordable housing services)

Junior Project Coordinator: \$175 (affordable housing services)

**EXHIBIT C**  
**INSURANCE REQUIREMENTS FOR CONSULTANTS**  
(Cyber/tech optional, not to be used for construction contracts)

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

**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 consultants 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 Consultant has no owned autos, hired (Code 8) and non-owned autos (Code 9) with limit no less than \$1 million for bodily injury and property damage. This requirement does not apply if no motor vehicles are used in providing services under the contract.
- **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.
- **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 in the aggregate. For consultants interacting with the public or with tenants, coverage must include coverage against discrimination, harassment, and fair housing claims under DFEH and HUD. If coverage is provided on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; insurance must be maintained, and evidence of coverage must be provided for at least five (5) years after completion of the contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
- **IF APPLICABLE: Cyber Liability Insurance:** Coverage is required if the vendor/consultant is accessing, collecting, storing, or transferring Personally identifiable Information or medical information on staff, tenant, applicants etc.). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs,

regulatory fines, and penalties as well as credit monitoring expenses with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. This requirement does not apply if the consultant will not be accessing or storing Owner data subject to privacy regulations under Federal or state law, including but not limited to PII, PCI, and PHI, providing software, or accessing Owner information technology systems.

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

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

#### **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 Consultant including materials, parts, or equipment furnished

in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

- **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects Owner, its directors, officers, officials, Board of Commissioners, Board of Directors, elected and appointed officials, employees, agents, representatives and volunteers. Any insurance or self-insurance maintained by Owner, 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 Owner.
- **Self-Insured Retentions:** Self-insured retentions must be declared and approved by Owner. Owner may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.
- **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 Owner.
- **Verification of Coverage:** Consultant shall furnish Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- **Subcontractors:** Consultant 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 Owner 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:** Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.



## ISLAND CITY DEVELOPMENT

Fax (510) 522-7848 | TTY/TRS 711

ITEM 4.F

To: Board of Directors  
Island City Development

From: Jenny Wong, Senior Project Manager

Date: June 26, 2024

Re: Ratify a Consultant Services Agreement Not to Exceed \$2,309,519.07 between the Housing Authority of the City of Alameda and Lakehurst and Mosley LP and Ratify a Consultant Services Agreement Not to Exceed \$5,439,696.14 between the Housing Authority of the City of Alameda and Mabuhay and Lakehurst LP for North Housing Block A Master Development Work.

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### **BACKGROUND**

The Housing Authority of the City of Alameda (AHA) is leading the development of the 12-acre North Housing parcel redevelopment at the former Alameda Naval Air Station (NAS), formerly known as Coast Guard Housing. AHA has supported Island City Development (ICD) in its active development of approximately 3 acres (Block A), which is the first phase of North Housing, with a total of 155 apartments, to be built as three separate projects: The Estuary I, The Estuary II, and Linnet Corner. ICD is the developer and has received options to ground lease for the three projects, each owned by a separate legal entity. As of January 2024 for The Estuary I and March 2024 for Linnet Corner, the ground leases for the land where these projects are located came into effect.

Please see previous Board reports for additional project details.

### **DISCUSSION**

In September 2023 through January 2024, the Board approved the AHA master development work for the North Housing Block A site and the concept of reimbursement agreements between the limited partnerships of each project and AHA to repay AHA for their pro rata share of the site preparation work.

On June 26, 2023, the Public Works Department approved the North Housing Phase I backbone improvements plan, which enabled the site infrastructure, soil stabilization, and offsite work to begin at North Housing Block A. On July 19, 2023, the Board approved the soil stabilization work performed by General Contractor, J.H. Fitzmaurice (JHF). On October 4, 2023, AHA authorized JHF to begin soil stabilization work on the Block A site in preparation for the future construction of the North Housing Block A projects. JHF completed the soil stabilization work in February 2024. As the final step in this process, on January 30, 2024, AHA initiated JHF to begin offsites work on the Block A site. Offsites work includes joint trench, installation of new water, sewer, and storm drain infrastructure, forming curbs and



gutters, and construction of the new Mabuhay Street. Offsites work will be completed with the completion of the Linnet Corner project, which is approximately October 2025.

The master development work requires other soft costs such as: soil engineer's field observations and materials testing to ensure work is performed to specification; builder's risk insurance; construction management consultant; security; and wage compliance monitoring requirements. Please see the sources and uses chart attached for the master development work budget.

This action is to ratify the consultant services agreements for The Estuary I and Linnet Corner projects with the effective date of February 1, 2024. The consultant services agreement serves as a contractual document that formalizes the reimbursement obligations of each development for the soil stabilization work, offsites work costs, soft costs, and any other costs taken on as part of the master plan activities. The pro rata share of master development work for The Estuary I and Linnet Corner is expected to be repaid to AHA by each respective Partnership on a monthly basis as work is completed through construction term sources. The remaining costs will be covered by future development.

For clarity, the projects and associated limited partnerships are:

The Estuary I - Lakehurst and Mosley LP

Linnet Corner - Mabuhay and Lakehurst LP

As approved in May 2024, a portion of the site work and offsites costs will be retained by AHA until repaid by future development.

### **FISCAL IMPACT**

The contract amounts discussed above are covered within the budget for The Estuary I and Linnet Corner. JHF will submit invoices for payment to AHA for work completed on a monthly basis and retention will be withheld until completion. The Estuary I and Linnet Corner limited partnerships plan to repay AHA 100% of their respective portions as outlined in the contracts. These projects have construction term sources available to reimburse AHA.

AHA will continue to carry the remaining costs for master development work at North Housing until future development is able to repay those costs.

### **CEQA**

None.

### **RECOMMENDATION**

Ratify a Consultant Services Agreement Not to Exceed \$2,309,519.07 between the Housing Authority of the City of Alameda and Lakehurst and Mosley LP and Ratify a Consultant Services Agreement Not to Exceed \$5,439,696.14 between the Housing Authority of the City of Alameda and Mabuhay and Lakehurst LP for North Housing Block A Master Development Work.

### **ATTACHMENTS**

1. Att1\_AHA Master Plan Fee Breakdown
2. Att2\_Master Plan Consultant Services Agreement for The Estuary I



3. Att3\_Master Plan Consultant Services Agreement for Linnet Corner

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jenny Wong".

Jenny Wong, Senior Project Manager

**AHA MASTER PLAN COSTS**

<b>Uses</b>	<b>Amount</b>	<b>The Estuary I</b>	<b>Linnet Corner</b>	<b>AHA/Future Development</b>
Soil Stabilization	\$4,444,191.22	\$1,022,163.98	\$2,666,514.73	\$755,512.51
Offsites	\$4,015,746.78	\$923,621.76	\$2,409,448.07	\$682,676.95
HKIT Construction Administration	\$45,000.00	\$15,000.00	\$15,000.00	\$15,000.00
ENGEO Geotechnical	\$296,200.00	\$98,733.33	\$98,733.34	\$98,733.33
Contingency	\$750,000.00	\$250,000.00	\$250,000.00	\$250,000.00
<b>Total</b>	<b>\$9,551,138.00</b>	<b>\$2,309,519.07</b>	<b>\$5,439,696.14</b>	<b>\$1,801,922.79</b>



## **CONSULTANT SERVICES AGREEMENT**

**THIS AGREEMENT**, effective as of this 1st day of February 2024, by and between LAKEHURST AND MOSLEY LP, a California limited partnership (hereinafter referred to as "Owner") and HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body corporate and politic, whose address is 701 Atlantic Avenue, Alameda, California 94501, (hereinafter referred to as "Consultant"), is made with reference to the following:

### **RECITALS:**

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

C. Consultant 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; and

D. Consultant has entered into AIA A102-2017, AIA A201-2017, and respective contract exhibits with J.H. Fitzmaurice, Inc. dated August 9, 2023, AIA A102-2017, AIA A201-2017, and respective contract exhibits with J.H. Fitzmaurice, Inc. dated January 12, 2024 (collectively referred to as "Construction Contract"), Consultant Services Agreement with HKIT Architects dated October 1, 2023, and Consultant Services Contract and subsequent Amendments with ENGEO Incorporated dated December 1, 2021 through December 1, 2023 to perform this work.

E. Owner and Consultant desire to enter into an agreement for master plan development services for The Estuary I project (the "Project").

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

1. **TERM:**

The time for Completion shall be by December 31, 2026, (the "Completion Date"), unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED:**

Consultant shall perform services according to the schedule set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT:**

Owner agrees to compensate Consultant pursuant to the terms and conditions of this Agreement only for the performance, to the reasonable satisfaction of Owner, of those tasks which began prior to the effective date of this agreement and will continue to take place during the term of this Agreement as specified in Exhibit A. Owner will not be obligated to compensate Consultant for

Consultant Services Agreement  
AHA - Lakehurst and Mosley LP

any work, services, or functions performed by Consultant which do not arise directly from the performance of tasks relating to the Scope of Services as outlined in Exhibit A, and according to the Fee Schedule set forth in Exhibit B. Owner shall pay Consultant within thirty (30) days receipt of Consultant's properly submitted invoice, which shall not be submitted more than once a month.

Total compensation under this contract will not exceed Two Million, Three Hundred Nine Thousand, Five Hundred Nineteen Dollars and Seven Cents (\$2,309,519.07). Twenty Thousand Dollars and Zero Cents (\$20,000.00) will be held back as retention and made available upon evidence of 90% completion of the Construction Contracts.

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

Consultant and Owner agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner.

6. **INDEPENDENT PARTIES:**

Owner and Consultant 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 Consultant, 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 Consultant's services. None of the benefits provided by Owner to its employees, including but not limited to unemployment insurance, workers' compensation coverage, vacation and sick leave are available from Owner to Consultant, 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 Consultant. Payments of the above items, if required, are the responsibility of Consultant.

Owner and Consultant 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):**

Consultant 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. Consultant shall indemnify and hold Owner harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

8. **NON-DISCRIMINATION:**

Consistent with Owner's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, an Owner employee, or a citizen by Consultant or Consultant's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, gender identity or sexual orientation will not be tolerated. Consultant agrees that any and all violations of this provision shall constitute a breach of this Agreement.

9. **INDEMNIFICATION/HOLD HARMLESS:**

Consultant Services Agreement  
AHA - Lakehurst and Mosley LP

Consultant shall indemnify, defend, and hold harmless the Owner, its general partners, lenders, investors, partners, legal representatives, successors and assigns, and their respective officers, officials, employees, contractors and agents (“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 Consultant, Consultant shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Consultant. However, Consultant shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

10. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Consultant shall furnish Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C, D and E. Such certificates, which do not limit Consultant’s indemnification, shall also contain substantially the following statement:

“Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to Lakehurst and Mosley LP by certified mail.”

It is agreed that Consultant shall maintain in force at all times during the performance of the Agreement all appropriate coverage of insurance acceptable to Owner and licensed to do insurance business in the State of California.

An endorsement naming Owner and any and all lenders, investors, and partners, if requested, as additional insured shall be submitted with the insurance certificates.

A. **COVERAGE:**

Consultant shall maintain the following insurance coverage:

(1) **Workers’ Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	each occurrence
	\$2,000,000	aggregate – all other
Property Damage:	\$1,000,000	each occurrence
	\$2,000,000	aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	per accident
	\$2,000,000	aggregate
Property Damage:	\$1,000,000	per accident
	\$2,000,000	aggregate

OR

Combined Single Limit:	\$1,000,000	per accident
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(4) **Professional Liability:**

Consultant Services Agreement  
AHA - Lakehurst and Mosley LP

Professional liability insurance which includes coverage for the negligent professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.

**B. SUBROGATION WAIVER:**

Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance that Consultant shall look solely to its insurance for recovery. Consultant hereby grants to Owner, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Owner with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against Owner by virtue of the payment of any loss under such insurance.

**C. FAILURE TO SECURE:**

If Consultant, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, Owner shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant 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.

**D. ADDITIONAL INSURED:**

Lakehurst and Mosley LP, ICD Lakehurst LLC, Island City Development, Bank of America, N.A., its successors and assigns, Wincopin Circle LLP and its successors, assigns, and transferees, The Banc of America Housing Fund XVII Limited Partnership, LLLP, City of Alameda, U.S. Bank National Association, a national banking association, its successors and assigns, State of California Department of Housing and Community Development, Housing Authority of the City of Alameda, Alameda Affordable Housing Corporation, and Bank of Marin shall be named as an additional insured under all insurance coverage's, except any professional liability insurance or worker's compensation insurance, required by this Agreement. The naming of an insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof.

Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

**E. SUFFICIENCY OF INSURANCE:**

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

**11. CONFLICT OF INTEREST:**

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant 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:**

Consultant 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 Owner. 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 Consultant from Owner 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 Owner by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint venture or syndicate or co tenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

**13. SUBCONTRACTOR APPROVAL:**

Unless prior written consent from Owner is obtained, only J. H. Fitzmaurice, Inc.; HKIT Architects; Carlson, Barbee, and Gibson, Inc.; ENGEO Incorporated; and those people and subcontractors performing under the Construction Contract shall be used in the performance of this Agreement. In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of worker's compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**14. ENFORCEMENT OF THE CONSTRUCTION CONTRACT WITH J.H. FITZMAURICE, INC.:**

The parties hereto agree that the Owner shall have, and is hereby assigned, the right of the Consultant to enforce the provisions of the Construction Contract and all documents related thereto in the event, as determined by the Owner, in its sole discretion, that the Consultant fails, refuses, or is otherwise unable to enforce them. The Owner shall notify the Consultant, in writing, of its determination to effect this assignment, specifying the reasons therefor, at least fifteen (15) days prior to the Owner's undertaking any such action.

**15. PERMITS AND LICENSES:**

Consultant, 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.

**16. 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 Consultant pursuant to or in connection with this Agreement shall be the exclusive property of Owner. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Owner 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 Owner, and all publication rights are reserved to Owner.

B. All Reports prepared by Consultant may be used by Owner in execution or implementation of:

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

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

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D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on to both sides of the paper except for one original which shall be single sided.

E. No Report, information nor other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by Owner

F. Consultant shall not be held liable for reuse of "Reports" for any purpose other than the original intent of this Agreement.

17. **RECORDS:**

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

Consultant 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. Consultant shall provide free access to the representatives of Owner or its designees to such books and records at proper times; and gives Owner 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.

18. **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 Consultant to Owner shall be addressed to Owner at:

Lakehurst and Mosley LP  
c/o Island City Development  
701 Atlantic Avenue  
Alameda, CA 94501-2161  
Attention: President

All notices, demands, requests, or approvals from Owner to Consultant shall be addressed to Consultant at:

Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501-2161  
Attention: Vanessa Cooper  
Phone: 510-747-4300      Email: [vcooper@alamedahsg.org](mailto:vcooper@alamedahsg.org)

19. **NO SMOKING, DRINKING OR RADIO USE:**

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

**20. TERMINATION:**

In the event Consultant hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant 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 Consultant from Owner of written notice of default, specifying the nature of such default and the steps necessary to cure such default, Owner may terminate the Agreement forthwith by giving to the Consultant written notice thereof. Consultant will not be held responsible for failure to perform in the event such failure is due to delay caused by the Owner. Owner shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Consultant 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.

**21. COMPLIANCES:**

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

**22. 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.

**23. ADVERTISEMENT:**

Consultant 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 Owner to do otherwise.

**24. CONFIDENTIALITY:**

A. **Definition.** Confidential Information, as used in this Agreement, shall mean any Owner Client data.

B. **Nondisclosure and Nonuse Obligation.** Consultant agrees that it will not use, disseminate, or in any way disclose any Confidential Information to any person, firm or business, except that Consultant may use Confidential Information to the extent necessary to perform its obligations under this Agreement. Consultant agrees that it shall treat all Confidential Information with the same degree of care as the Consultant accords to its own Confidential Information, but in no case less than reasonable care. Consultant agrees that it shall disclose Confidential Information only to those of its employees who need to know such information, and the Consultant certifies that such employees have previously agreed, as a condition of employment, to be bound by terms and conditions applicable to Consultant under this Agreement. Consultant shall immediately give notice to Owner of any unauthorized use or disclosure of Confidential Information.

C. **Exclusions from Nondisclosure and Nonuse Obligations.** The obligations

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under 23B (“Nondisclosure and Nonuse Obligation”) shall not apply to such portion that Consultant 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.** All Confidential Information shall remain the property of the Owner. At Owner’s request and no later than five (5) business days after such request, Consultant shall promptly destroy or deliver to Owner, at Owner’s option, i) all materials furnished to Consultant, ii) all tangible media of expression in Consultant’s possession or control to the extent that such tangible media incorporate any of the Confidential Information, and iii) written certification of the Consultant’s compliance with such obligations under this sentence.

25. **WAIVER:**

A waiver by Owner 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.

26. **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 Owner and Consultant.

27. **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.

28. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by this reference:

- i. Exhibit A – Scope of Services
- ii. Exhibit B – Fee Schedule
- iii. Exhibit C – Project Milestones
- iv. Exhibit D – Insurance Requirements for Consultants

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IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the 8th of May 2024.

**Owner:**

**Consultant:**

LAKEHURST AND MOSLEY LP,  
a California limited partnership

By: ICD Lakehurst LLC,  
a California limited liability company,  
its managing general partner

By: Island City Development,  
a California nonprofit public  
benefit corporation, its sole  
manager

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

DocuSigned by:  
*Vanessa Cooper*  
5AF A57 2395 C2484  
Vanessa M. Cooper  
President

DocuSigned by:  
*Vanessa Cooper*  
5AF A57 2395 C2484  
Vanessa M. Cooper  
Executive Director

<sup>DS</sup>  
*SM* <sup>DS</sup>  
*JW*

**EXHIBIT A**  
**SCOPE OF SERVICES**

The Housing Authority of the City of Alameda (“AHA” or “Consultant”) is the property owner and master developer of the 12-acre North Housing site generally located at 501 Mosley Avenue, Alameda, CA 94501. AHA has performed or will perform the following work to prepare the site for the future North Housing Block A housing developments, and the Scope of Services shall mean the following work to the extent located on the site of the Project:

1. Ground improvements in the form of soil stabilization per AIA A102-2017, AIA A201-2017, and respective contract exhibits between AHA and J.H. Fitzmaurice, Inc. dated August 9, 2023 for the “North Housing Block A Soil Stabilization” project under JHF Job No. 23849. Work is expected to be completed by March 31, 2024.
2. Ground improvements in the form of offsites work per AIA A102-2017, AIA A201-2017, and respective contract exhibits between AHA and J.H. Fitzmaurice, Inc. dated January 12, 2024 for the “North Housing Block A Offsites” project under JHF Job No. 23845. Work is expected to be completed by December 31, 2025.
3. Housing Development services, including project management and construction administration of the North Housing Block A soil stabilization or site preparation activities (demolition, excavation, and ground improvements) per Consultant Services Agreement between AHA and HKIT Architects, Inc. dated October 1, 2023.
4. Geotechnical services per Consultant Services Agreement between AHA and ENGEO Incorporated dated December 1, 2021, Amendment No.1 dated March 21, 2022, Amendment No. 2 dated January 23, 2023, Amendment No. 3 dated May 1, 2023, Amendment No. 4 dated June 14, 2023, Amendment No. 5 dated October 10, 2023, Amendment No. 6 dated December 1, 2023, and Amendment No. 7 dated December 1, 2023.
5. Any additional work required to prepare the site for the future housing developments, as agreed upon by the Owner and Consultant.

**EXHIBIT B**  
**FEE SCHEDULE**

The table below outlines the pro rata share of costs attributable to the project.

	<b>Costs</b>	<b>The Estuary I</b> 500 Mosley Avenue	<b>Linnet Corner</b> 2000 Lakehurst Circle	<b>AHA / Future Development</b>
Soil Stabilization	\$4,444,191.22	\$1,022,163.98	\$2,666,514.73	\$755,512.51
Offsites	\$4,015,746.78	\$923,621.76	\$2,409,448.07	\$682,676.95
HKIT Construction Administration	\$45,000.00	\$15,000.00	\$15,000.00	\$15,000.00
ENGEO Geotechnical	\$296,200.00	\$98,733.33	\$98,733.34	\$98,733.33
Contingency	\$750,000.00	\$250,000.00	\$250,000.00	\$250,000.00
<b>Total</b>	<b>\$9,551,138.00</b>	<b>\$2,309,519.07</b>	<b>\$5,439,696.14</b>	<b>\$1,801,922.79</b>

The not-to-exceed amount for this contract is \$2,309,519.07.

**EXHIBIT C**  
**PROJECT MILESTONES**

50% Completion of Construction Contracts

January 1, 2026

90% Completion of Construction Contracts

October 1, 2026

**EXHIBIT D**  
**INSURANCE REQUIREMENTS FOR CONSULTANTS**  
 (Cyber/tech optional, not to be used for construction contracts)

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

**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 consultants 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 Consultant has no owned autos, hired (Code 8) and non-owned autos (Code 9) with limit no less than \$1 million for bodily injury and property damage. This requirement does not apply if no motor vehicles are used in providing services under the contract.
- **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.
- **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 in the aggregate. For consultants interacting with the public or with tenants, coverage must include coverage against discrimination, harassment, and fair housing claims under DFEH and HUD. If cover age is provided on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; insurance must be maintained, and evidence of coverage must be provided for at least five (5) years after completion of the contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
- **IF APPLICABLE: Cyber Liability Insurance:** Coverage is required if the vendor/consultant is accessing, collecting, storing, or transferring Personally identifiable Information or medical information on staff, tenant, applicants etc.). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic

information. The policy shall provide coverage for breach response costs, regulatory fines, and penalties as well as credit monitoring expenses with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. This requirement does not apply if the consultant will not be accessing or storing AHA data subject to privacy regulations under Federal or state law, including but not limited to PII, PCI, and PHI, providing software, or accessing AHA information technology systems.

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

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

#### **OTHER INSURANCE REQUIREMENTS:**

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

- **Additional Insured Status:** Bank of America, N.A., its successors and assigns, Wincopin Circle LLP and its successors, assigns, and transferees, California Community Reinvestment Corporation, a California nonprofit public benefit corporation, its successors and assigns, The Banc of America Housing Fund XVII Limited Partnership, LLLP, City of Alameda, U.S. Bank National Association, a

national banking association, its successors and assigns, State of California Department of Housing and Community Development, California Municipal Finance Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California, Bank of Marin, and Housing Authority of the City of Alameda and its affiliates, Alameda Affordable Housing Corporation, Island City Development, ICD Lakehurst LLC 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 Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

- **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects Owner, its general partners, lenders, investors, partners, successors or assigns. Any insurance or self-insurance maintained by Owner, its general partners, lenders, investors, partners, successors or assigns 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 Owner.
- **Self-Insured Retentions:** Self-insured retentions must be declared and approved by Owner. Owner may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.
- **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 Owner.
- **Verification of Coverage:** Consultant shall furnish Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- **Subcontractors:** Consultant 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 Owner 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:** Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.

## **CONSULTANT SERVICES AGREEMENT**

**THIS AGREEMENT**, effective as of this 1st day of February 2024, by and between MABUHAY AND LAKEHURST LP, a California limited partnership (hereinafter referred to as "Owner") and HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body corporate and politic, whose address is 701 Atlantic Avenue, Alameda, California 94501, (hereinafter referred to as "Consultant"), is made with reference to the following:

### **RECITALS:**

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

C. Consultant 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; and

D. Consultant has entered into AIA A102-2017, AIA A201-2017, and respective contract exhibits with J.H. Fitzmaurice, Inc. dated August 9, 2023, AIA A102-2017, AIA A201-2017, and respective contract exhibits with J.H. Fitzmaurice, Inc. dated January 12, 2024 (collectively referred to as "Construction Contract"), Consultant Services Agreement with HKIT Architects dated October 1, 2023, and Consultant Services Contract and subsequent Amendments with ENGEIO Incorporated dated December 1, 2021 through December 1, 2023 to perform this work.

E. Owner and Consultant desire to enter into an agreement for master plan development services for Linnet Corner project (the "Project").

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

1. **TERM:**

The time for Completion shall be by December 31, 2026, (the "Completion Date"), unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED:**

Consultant shall perform services according to the schedule set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT:**

Owner agrees to compensate Consultant pursuant to the terms and conditions of this Agreement only for the performance, to the reasonable satisfaction of Owner, of those tasks which began prior to the effective date of this agreement and will continue to take place during the term of this Agreement. Owner will not be obligated to compensate Consultant for any work, services, or



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functions performed by Consultant which do not arise directly from the performance of tasks relating to the Scope of Services as outlined in Exhibit A, and according to the Fee Schedule set forth in Exhibit B. Owner shall pay Consultant within thirty (30) days receipt of Consultant's properly submitted invoice, which shall not be submitted more than once a month.

Total compensation under this contract will not exceed Five Million, Four Hundred Thirty-Nine Thousand, Six Hundred Ninety-Six Dollars and Fourteen Cents (\$5,439,696.14). Twenty Thousand Dollars and Zero Cents (\$20,000.00) will be held back as retention and made available upon evidence of 90% completion of the Construction Contracts.

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

Consultant and Owner agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing 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 Owner nor have any contractual relationship with Owner.

6. **INDEPENDENT PARTIES:**

Owner and Consultant 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 Consultant, 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 Consultant's services. None of the benefits provided by Owner to its employees, including but not limited to unemployment insurance, workers' compensation coverage, vacation and sick leave are available from Owner to Consultant, 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 Consultant. Payments of the above items, if required, are the responsibility of Consultant.

Owner and Consultant 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):**

Consultant 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. Consultant shall indemnify and hold Owner harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

8. **NON-DISCRIMINATION:**

Consistent with Owner's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, an Owner employee, or a citizen by Consultant or Consultant's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, gender identity or sexual orientation will not be tolerated. Consultant agrees that any and all violations of this provision shall constitute a breach of this Agreement.

9. **INDEMNIFICATION/HOLD HARMLESS:**

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Consultant shall indemnify, defend, and hold harmless the Owner, its general partners, lenders, investors, partners, legal representatives, successors and assigns, and their respective officers, officials, employees, contractors and agents (“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 Consultant, Consultant shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Consultant. However, Consultant shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

10. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Consultant shall furnish Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C, D and E. Such certificates, which do not limit Consultant’s indemnification, shall also contain substantially the following statement:

“Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to Mabuhay and Lakehurst LP by certified mail.”

It is agreed that Consultant shall maintain in force at all times during the performance of the Agreement all appropriate coverage of insurance acceptable to Owner and licensed to do insurance business in the State of California.

An endorsement naming Owner and any and all lenders, investors, and partners, if requested, as additional insured shall be submitted with the insurance certificates.

A. **COVERAGE:**

Consultant shall maintain the following insurance coverage:

(1) **Workers’ Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	each occurrence
	\$2,000,000	aggregate – all other
Property Damage:	\$1,000,000	each occurrence
	\$2,000,000	aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	per accident
	\$2,000,000	aggregate
Property Damage:	\$1,000,000	per accident
	\$2,000,000	aggregate

OR

Combined Single Limit:	\$1,000,000	per accident
------------------------	-------------	--------------

(4) **Professional Liability:**

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Professional liability insurance which includes coverage for the negligent professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.

**B. SUBROGATION WAIVER:**

Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance that Consultant shall look solely to its insurance for recovery. Consultant hereby grants to Owner, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Owner with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against Owner by virtue of the payment of any loss under such insurance.

**C. FAILURE TO SECURE:**

If Consultant, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, Owner shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant 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.

**D. ADDITIONAL INSURED:**

Mabuhay and Lakehurst LP, ICD Mabuhay LLC, Island City Development, Bank of America, N.A., its successors and assigns, Wincopin Circle LLP and its successors, assigns, and transferees, California Community Reinvestment Corporation, a California nonprofit public benefit corporation, its successors and assigns, The Banc of America Housing Fund XVII Limited Partnership, LLLP, U.S. Bank National Association, a national banking association, its successors and assigns, State of California Department of Housing and Community Development, California Municipal Finance Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California, Housing Authority of the City of Alameda, Alameda Affordable Housing Corporation, and Bank of Marin shall be named as an additional insured under all insurance coverage's, except any professional liability insurance or worker's compensation insurance, required by this Agreement. The naming of an insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

**E. SUFFICIENCY OF INSURANCE:**

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

**11. CONFLICT OF INTEREST:**

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant 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:**

Consultant 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 Owner.

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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 Consultant from Owner 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 Owner by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint venture or syndicate or co tenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL:**

Unless prior written consent from Owner is obtained, only J. H. Fitzmaurice, Inc.; HKIT Architects; Carlson, Barbee, and Gibson, Inc.; ENGEO Incorporated; and those people and subcontractors performing under the Construction Contract shall be used in the performance of this Agreement. In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of worker's compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. **ENFORCEMENT OF THE CONSTRUCTION CONTRACT WITH J.H. FITZMAURICE, INC.:**

The parties hereto agree that the Owner shall have, and is hereby assigned, the right of the Consultant to enforce the provisions of the Construction Contract and all documents related thereto in the event, as determined by the Owner, in its sole discretion, that the Consultant fails, refuses, or is otherwise unable to enforce them. The Owner shall notify the Consultant, in writing, of its determination to effect this assignment, specifying the reasons therefor, at least fifteen (15) days prior to the Owner's undertaking any such action.

15. **PERMITS AND LICENSES:**

Consultant, 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.

16. **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 Consultant pursuant to or in connection with this Agreement shall be the exclusive property of Owner. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Owner 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 Owner, and all publication rights are reserved to Owner.

B. All Reports prepared by Consultant may be used by Owner in execution or implementation of:

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

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

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on to both sides of the paper except for one original which shall be single sided.

E. No Report, information nor other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by Owner

F. Consultant shall not be held liable for reuse of "Reports" for any purpose other than the original intent of this Agreement.

17. **RECORDS:**

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

Consultant 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. Consultant shall provide free access to the representatives of Owner or its designees to such books and records at proper times; and gives Owner 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.

18. **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 Consultant to Owner shall be addressed to Owner at:

Mabuhay and Lakehurst LP  
c/o Island City Development  
701 Atlantic Avenue  
Alameda, CA 94501-2161  
Attention: President

All notices, demands, requests, or approvals from Owner to Consultant shall be addressed to Consultant at:

Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501-2161  
Attention: Vanessa Cooper  
Phone: 510-747-4300

Email: [vcooper@alamedahsg.org](mailto:vcooper@alamedahsg.org)

19. **NO SMOKING, DRINKING OR RADIO USE:**

Consultant agrees and acknowledges that smoking of tobacco products, drinking alcoholic beverages, and listening to radios is prohibited at any Owner site, including individual units,

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common areas, and every building and adjoining grounds. Consultant shall ensure that his/her employees and suppliers comply with these prohibitions.

20. **TERMINATION:**

In the event Consultant hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant 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 Consultant from Owner of written notice of default, specifying the nature of such default and the steps necessary to cure such default, Owner may terminate the Agreement forthwith by giving to the Consultant written notice thereof. Consultant will not be held responsible for failure to perform in the event such failure is due to delay caused by the Owner. Owner shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Consultant 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.

21. **COMPLIANCES:**

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

22. **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.

23. **ADVERTISEMENT:**

Consultant 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 Owner to do otherwise.

24. **CONFIDENTIALITY:**

A. **Definition.** Confidential Information, as used in this Agreement, shall mean any Owner Client data.

B. **Nondisclosure and Nonuse Obligation.** Consultant agrees that it will not use, disseminate, or in any way disclose any Confidential Information to any person, firm or business, except that Consultant may use Confidential Information to the extent necessary to perform its obligations under this Agreement. Consultant agrees that it shall treat all Confidential Information with the same degree of care as the Consultant accords to its own Confidential Information, but in no case less than reasonable care. Consultant agrees that it shall disclose Confidential Information only to those of its employees who need to know such information, and the Consultant certifies that such employees have previously agreed, as a condition of employment, to be bound by terms and conditions applicable to Consultant under this Agreement. Consultant shall immediately give notice to Owner 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 Consultant 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.** All Confidential Information shall remain the property of the Owner. At Owner’s request and no later than five (5) business days after such request, Consultant shall promptly destroy or deliver to Owner, at Owner’s option, i) all materials furnished to Consultant, ii) all tangible media of expression in Consultant’s possession or control to the extent that such tangible media incorporate any of the Confidential Information, and iii) written certification of the Consultant’s compliance with such obligations under this sentence.

25. **WAIVER:**

A waiver by Owner 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.

26. **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 Owner and Consultant.

27. **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.

28. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by this reference:

- i. Exhibit A – Scope of Services
- ii. Exhibit B – Fee Schedule
- iii. Exhibit C – Project Milestones
- iv. Exhibit D – Insurance Requirements for Consultants

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IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the 8<sup>th</sup> of May 2024.

**Owner:**

**Consultant:**

MABUHAY AND LAKEHURST LP,  
a California limited partnership

By: ICD Mabuhay LLC,  
a California limited liability company,  
its managing general partner

By: Island City Development,  
a California nonprofit public  
benefit corporation, its sole  
manager

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

DocuSigned by:  
*Vanessa Cooper*  
5AF A57/2395 C2484  
Vanessa M. Cooper  
President

DocuSigned by:  
*Vanessa Cooper*  
5AF A57/2395 C2484  
Vanessa M. Cooper  
Executive Director

DS DS  
*SM* *PH*



**EXHIBIT A**  
**SCOPE OF SERVICES**

The Housing Authority of the City of Alameda (“AHA” or “Consultant”) is the property owner and master developer of the 12-acre North Housing site generally located at 501 Mosley Avenue, Alameda, CA 94501. AHA has performed or will perform the following work to prepare the site for the future North Housing Block A housing developments, and the Scope of Services shall mean the following work to the extent located on the site of the Project:

1. Ground improvements in the form of soil stabilization per AIA A102-2017, AIA A201-2017, and respective contract exhibits between AHA and J.H. Fitzmaurice, Inc. dated August 9, 2023 for the “North Housing Block A Soil Stabilization” project under JHF Job No. 23849. Work is expected to be completed by March 31, 2024.
2. Ground improvements in the form of offsites work per AIA A102-2017, AIA A201-2017, and respective contract exhibits between AHA and J.H. Fitzmaurice, Inc. dated January 12, 2024 for the “North Housing Block A Offsites” project under JHF Job No. 23845. Work is expected to be completed by December 31, 2025.
3. Housing Development services, including project management and construction administration of the North Housing Block A soil stabilization or site preparation activities (demolition, excavation, and ground improvements) per Consultant Services Agreement between AHA and HKIT Architects, Inc. dated October 1, 2023.
4. Geotechnical services per Consultant Services Agreement between AHA and ENGEO Incorporated dated December 1, 2021, Amendment No.1 dated March 21, 2022, Amendment No. 2 dated January 23, 2023, Amendment No. 3 dated May 1, 2023, Amendment No. 4 dated June 14, 2023, Amendment No. 5 dated October 10, 2023, Amendment No. 6 dated December 1, 2023, and Amendment No. 7 dated December 1, 2023.
5. Any additional work required to prepare the site for the future housing developments, as agreed upon by the Owner and Consultant.

**EXHIBIT B**  
**FEE SCHEDULE**

The table below outlines the pro rata share of costs attributable to the project.

	<b>Costs</b>	<b>The Estuary I</b> 500 Mosley Avenue	<b>Linnet Corner</b> 2000 Lakehurst Circle	<b>AHA / Future Development</b>
Soil Stabilization	\$4,444,191.22	\$1,022,163.98	\$2,666,514.73	\$755,512.51
Offsites	\$4,015,746.78	\$923,621.76	\$2,409,448.07	\$682,676.95
HKIT Construction Administration	\$45,000.00	\$15,000.00	\$15,000.00	\$15,000.00
ENGEO Geotechnical	\$296,200.00	\$98,733.33	\$98,733.34	\$98,733.33
Contingency	\$750,000.00	\$250,000.00	\$250,000.00	\$250,000.00
<b>Total</b>	<b>\$9,551,138.00</b>	<b>\$2,309,519.07</b>	<b>\$5,439,696.14</b>	<b>\$1,801,922.79</b>

The not-to-exceed amount for this contract is \$5,439,696.14.

**EXHIBIT C**  
**PROJECT MILESTONES**

50% Completion of Construction Contracts

January 1, 2026

90% Completion of Construction Contracts

October 1, 2026

**EXHIBIT D**  
**INSURANCE REQUIREMENTS FOR CONSULTANTS**  
 (Cyber/tech optional, not to be used for construction contracts)

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

**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 consultants 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 Consultant has no owned autos, hired (Code 8) and non-owned autos (Code 9) with limit no less than \$1 million for bodily injury and property damage. This requirement does not apply if no motor vehicles are used in providing services under the contract.
- **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.
- **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 in the aggregate. For consultants interacting with the public or with tenants, coverage must include coverage against discrimination, harassment, and fair housing claims under DFEH and HUD. If cover age is provided on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; insurance must be maintained, and evidence of coverage must be provided for at least five (5) years after completion of the contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
- **IF APPLICABLE: Cyber Liability Insurance:** Coverage is required if the vendor/consultant is accessing, collecting, storing, or transferring Personally identifiable Information or medical information on staff, tenant, applicants etc.). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic

information. The policy shall provide coverage for breach response costs, regulatory fines, and penalties as well as credit monitoring expenses with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. This requirement does not apply if the consultant will not be accessing or storing AHA data subject to privacy regulations under Federal or state law, including but not limited to PII, PCI, and PHI, providing software, or accessing AHA information technology systems.

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

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

#### **OTHER INSURANCE REQUIREMENTS:**

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

- **Additional Insured Status:** Bank of America, N.A., its successors and assigns, Wincopin Circle LLP and its successors, assigns, and transferees, California Community Reinvestment Corporation, a California nonprofit public benefit corporation, its successors and assigns, The Banc of America Housing Fund XVII Limited Partnership, LLLP, U.S. Bank National Association, a national banking

association, its successors and assigns, State of California Department of Housing and Community Development, California Municipal Finance Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California, Bank of Marin, and Housing Authority of the City of Alameda and its affiliates, Alameda Affordable Housing Corporation, Island City Development, ICD Mabuhay LLC 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 Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

- **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects Owner, its general partners, lenders, investors, partners, successors or assigns. Any insurance or self-insurance maintained by Owner, its general partners, lenders, investors, partners, successors or assigns 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 Owner.
- **Self-Insured Retentions:** Self-insured retentions must be declared and approved by Owner. Owner may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.
- **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 Owner.
- **Verification of Coverage:** Consultant shall furnish Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- **Subcontractors:** Consultant 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 Owner 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:** Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.