

REQUEST FOR LEGAL WORK

TO: ☐ City Atty ☒ Asst City Atty: Len Aslanian
☐ Risk Manager ☐ Other:

Cost Allocation Code _____

FROM: Name: Annie Cox/Lisa Maxwell
 Phone: 6893/6899

Dept: Community Development
 Dept Head Approval: _____

DocuSigned by:

Lisa Maxwell
 03D4CD3886B6458...

DATE: 5/1/23 Please complete by: asap

**GOING TO
COUNCIL/PUB ON 5/16/23**

☐ Give Legal Opinion ☐ Written ☐ Oral
☐ Review/Comment on DRAFT ☒ Agreement ☐ Staff Report ☐ Other:
☒ Approve As To Form ☐ Agreement ☐ Other:

BACKGROUND INFORMATION:

Lease termination agreement for Building 92 with Alameda Point Collaborative, Inc. Going to City Council on 5/16/23 – file 2023-3013 – with a proposed lease termination date of 6/1/23.

I am requesting this **Agreement** be **Approved As To Form**. I understand that in order to be approved I must complete each of the following:

☒ Outside Party Signature ☐ Dept Head Signature on Documents ☒ Signature Approval Form (If going to CM)
☐ Certificate(s) of Insurance ☐ Additional Insured Endorsement(s)
☐ Necessary Attachments/Exhibits ☐ Bonds or ☐ Bonds to be provided later **[No work until bonds approved by Risk]**
☐ Person from Department who has read and negotiated the contract and is responsible for knowing the contents.

Name: Lisa Maxwell/Len Aslanian

Phone: 6899

☐ City's Standard Agreement Without Changes **OR** ☐ Agreement Modified Because:

Routing Request: If Approved, I would like you to forward these documents in this order (select # order):

☐ City Manager ☐ City Clerk ☒ Back to me ☐ Other:

RISK MANAGEMENT RESPONSE:

☐ Not Approved (See Comments) – Date/Initials

☐ Approved - Date/Initials: 5/2/2023

☐ Review Only – Date/Initials:

DS
LC

COMMENTS:

CITY ATTORNEY RESPONSE:

AGREEMENTS: ☐ Not Approved / Return to Dept – Date/Initials:

☐ Approved – Date/Initials: 5/2/2023

☐ Reviewed - Date/Initials:

DS
LA

COMMENTS:

City of Alameda



Signature Approval Form

Date: 5/1/23

To: Jennifer Ott, City Manager

From: Lisa Maxwell, Community Development Director

Re: Signature Request

Please check one of the following boxes:

- ☐ Service Provider Agreement
- ☐ Accounts Payable
- ☒ Other - If other box is checked, explain:

Short summary of what the document is to be signed.

Lease termination agreement for Building 92 with Alameda Point Collaborative, Inc. Going to City Council on 5/16/23 – file 2023-3013 – with a proposed lease termination date of 6/1/23.

Short summary as to why this needs approval/signature.

Is this going to Council? yes When? 5/16 File # 2023-3013

or provide the following Council details

Per Council Action:
Date: 5/16
Resolution #:
Original Contract Amount:
Budget Balance:
Other Pertinent Information:

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT ("Agreement") is entered into as of _____, 202__ (the "Effective Date"), by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("Landlord" or "City") and ALAMEDA POINT COLLABORATIVE, INC., a California nonprofit public benefit corporation ("Tenant") (collectively, the "Parties"), with reference to the following:

RECITALS

A. WHEREAS, Landlord's predecessor-in-interest, the Alameda Reuse and Redevelopment Authority ("ARRA") entered into a lease agreement with Tenant, dated for reference purposes as of September 7, 2005 (the "Lease"), for those certain premises known as Building 92, located at 650 W. Ranger Ave., consisting of approximately 93,000 square feet (the "Premises"); and

B. WHEREAS, on January 31, 2012, the Governing Board of the ARRA assigned its rights, assets, liabilities and obligations to the City and, on February 7, 2012, the City Council accepted the assignment, pursuant to which the City became the Landlord and successor to the ARRA under the Lease; and

B. WHEREAS, the current term of the Lease runs through January 21, 2058; and

C. WHEREAS, Tenant is charged no base rent under the Lease, and is current on all other taxes, assessments, fees, charges, and financial obligations owed by Tenant to Landlord under the Lease, and otherwise is not in default of any of its obligations under the Lease; and

D. WHEREAS, Landlord and Tenant desire an early termination of the Lease as of the Effective Date of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants set forth in this Agreement, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The above Recitals are true and correct and incorporated herein by this reference.

2. **Termination of Lease.** The Lease is hereby terminated and of no further force or effect as of June 1, 2023 (the "Termination Date"), subject to Tenant's faithful performance of its obligations set forth herein and except to the extent that any obligations under the Lease by their terms survive termination of the Lease.

3. **Surrender of Premises.** Tenant hereby agrees to vacate the Premises and surrender and deliver exclusive possession of the Premises to Landlord on or before the Termination Date in accordance with the applicable surrender provisions in Section 41 of the Lease. Without limiting the foregoing, on or before the Termination Date, Tenant shall, at

Tenant's sole cost and expense, remove or cause to be removed from the Premises any and all furniture, trade fixtures and equipment, free-standing cabinet work, and other personal property owned by Tenant or installed or placed by Tenant at its expense in or around the Premises, and all such similar articles of any other persons to whom Tenant granted access to the Premises during the Lease term. Tenant shall further, at Tenant's sole cost and expense, remove or cause to be remain any improvements and/or alterations required to be removed by Tenant under the terms of the Lease upon the expiration or earlier termination of the Lease, and deliver the Premises to Landlord in a broom-clean condition. However, the Parties agree that Tenant shall not be required to remove the fencing inside the Premises that demises the space into smaller spaces.

4. **Lease Termination Payment.** In connection with this Agreement, and in consideration for Tenant's voluntary early termination of the Lease, City agrees to make a one-time payment to Tenant in the total amount of \$831,740.00. City shall timely issue this payment within forty-five (45) calendar days after final adoption of this Agreement by the City Council. The Parties agree that other than this one-time payment neither Tenant nor any Tenant Affiliates shall, in connection with this Agreement or Tenant's early termination of its Lease rights, be owed or otherwise entitled to any payment, fee, disbursement, benefit, refund, or consideration whatsoever from the City, its City Council, boards, commissions, officials, employees, agents and volunteers. As used herein, "Tenant Affiliate" means (i) an entity controlling, controlled by or under common control with Tenant, (ii) a successor corporation related to Tenant by merger, consolidation, nonbankruptcy reorganization, or government action, or (iii) any other successor, assign, board member, director, officer, agent, employee, volunteer, or beneficiary of Tenant not otherwise described herein.

5. **Subtenants.** Tenant currently subleases portions of Building 92 to two (2) separate subtenants: 1) the American National Red Cross, and 2) Alameda Food Bank ("Subtenants"). Landlord previously approved both Subtenants per Section 6(c) of the Lease. Landlord and Tenant hereby acknowledge and agree that both subtenancies will terminate and be of no further force or effect after the Termination Date. However, Landlord acknowledges that it intends to execute new leases or licenses for portions of Building 92 with both Subtenants so as to minimize any disruption in their ongoing business activities.

6. **Continuing Liability.** Notwithstanding the termination of the Lease, Tenant shall remain liable for: (i) the performance of all of its obligations under the Lease, with respect to the period of its tenancy prior to and including the Termination Date (including, without limitation, Tenant's payment of taxes, fees, charges, utilities any other applicable expenses to Landlord); and (ii) all of Tenant's hold harmless and indemnification obligations, which shall expressly survive the termination of the Lease, and Landlord shall retain all its rights and remedies with respect to such obligations as set forth in the Lease.

7. **Representations of Tenant.** Tenant represents and warrants to Landlord that as of the Effective Date there are no, and as of the Termination Date there shall not be any, mechanics' liens and/or other liens or encumbrances on all or any portion of the Premises, by virtue of any act or omission on the part of Tenant, its predecessors, contractors, agents, employees, subtenants, guests, or invitees. Notwithstanding the termination of the Lease and the

release of liability as provided for herein, the representations and warranties set forth in this section shall survive the Termination Date and Tenant shall be liable to Landlord for any inaccuracy or any breach thereof.

8. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

9. **Advice of Counsel.** Each of the parties acknowledges that it has had the opportunity to seek the advice of independent legal counsel in connection with this Agreement and that it understands the meaning of every term of this Agreement and the consequences of signing this Agreement.

10. **Attorneys' Fees.** In the event of any litigation, including administrative proceedings, relating to this Agreement or the Lease, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail. This Section shall supersede and replace all references and obligations of the Parties regarding payment of litigation fees and costs that are set forth in Section 34(d) of the Lease.

11. **Defined Terms.** Capitalized terms used in this Agreement shall have the same definition as set forth in the Leases to the extent that such capitalized terms are defined therein but not defined in this Agreement.

12. **Authority.** If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Agreement on behalf of Tenant does hereby covenant and warrant that: (i) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of the State of California, establishment or formation, (ii) Tenant has and is duly qualified to do business in California, (iii) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Agreement and to perform all of Tenant's obligations hereunder, and (iv) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Tenant is duly and validly authorized to do so.

13. **Counterparts.** This Agreement may be executed in several counterparts, and when all are so executed and delivered, they shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all are not signatories to the original or same counterpart.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without regard to its conflict of law rules.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease Termination Agreement as of the day and year first above written.

LANDLORD:

City of Alameda,
a charter city and municipal corporation

TENANT:

Alameda Point Collaborative
a California non-profit corporation

By: _____
Jennifer Ott
City Manager

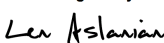
Date: _____

DocuSigned by:

33715DA6B1334B4...
By: _____
Doug Biggs
Executive Director

Date: 4/28/2023

Approved as to Form

DocuSigned by:

765D25E39B18464...
By: _____
Len Aslanian
Assistant City Attorney