

FIRST AMENDMENT TO SERVICES AGREEMENT

THIS FIRST AMENDMENT TO SERVICES AGREEMENT ("First Amendment") entered into between the City of Alameda ("City") and the Housing Authority of the City of Alameda, a public body corporate and politic ("Authority") is made effective August 1, 2020 ("Effective Date"). The City and Housing Authority are individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

- A. City and Authority entered into a Services Agreement effective July 1, 2019 ("Services Agreement") wherein, among other things, the Parties agreed that the Authority would manage and implement certain community development and affordable housing related services on behalf of the City, as more specifically described therein. All capitalized terms not defined herein shall have the meaning ascribed to such term in the Services Agreement.
- B. The term of the Services Agreement expires on June 30, 2021. The City desires to extend the term an additional two years so that it expires on June 30, 2023.
- C. Due to the City's reorganization of its Community Development Department, the City desires to amend the Services Agreement to retain administration of certain programs and services including (i) all aspects of the Community Development Block Grant ("CDBG") program, (ii) HOME Investment Partnerships program, (iii) First Time Home Buyer Program, (iv) management of the affordable housing loan program portfolio, (v) oversight of the Alameda Point Collaborative Legally Binding Agreement (LBAs)), and (vi) administration of the inclusionary housing program currently being carried out by the Authority, with the Authority continuing to implement and be responsible for certain affordable housing funds provided by the City and other services, as more specifically described below.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises set forth below, the adequacy of which is mutually acknowledged, the Parties agree the Services Agreement shall be amended as follows:

1. **Recitals.** The Recitals referenced above are true and correct and incorporated herein by this reference.
2. **Term of Agreement.** Section 1. of the Services Agreement titled, "Term of Agreement" is hereby deleted in its entirety and replaced with the following:

" 1. **Term of Agreement** This Agreement, as amended by that certain First Amendment to Services Agreement dated August 1, 2020 ("First Amendment"), commences as of the Effective Date and terminates on June 30, 2023."

3. **Housing Services Defined.** Section 2. of the Services Agreement titled, "Housing Services Defined" is hereby deleted in its entirety and replaced with the following:

" 2. Housing Services Defined Housing services and the corresponding funding for provision of those Housing Services will be detailed in the City's Fiscal Year 2020-2021, 2021-2022 and 2022-2023 budgets. The City's Fiscal Year 2020-2021 budget is attached to this Agreement as Exhibit A and incorporated herein by this reference. The City's Fiscal Year 2021-2022 and 2022-2023 budgets shall be in substantially the same form as the Fiscal Year 2020-2021 budget attached as Exhibit A. The Authority and City's roles in providing these services are outlined in the Revised Housing Services Scope of Work attached hereto as Exhibit B and incorporated herein by this reference. The Authority's revised scope of work described in the Revised Housing Services Scope of Work shall commence effective August 1, 2020. On July 31, 2020, Authority shall cease performance of any work, functions or other obligations not identified in the Revised Housing Services Scope of Work."

4. **Alameda Police Services.** Section 5. of the Services Agreement titled, "Alameda Police Services" is hereby deleted in its entirety and replaced with the following:

"5. Alameda Police Services At the request of the Authority's Executive Director, or her designee, the Alameda Police Department will provide the services outlined in the "Police Services Scope of Work" which services are additional to regular patrol and emergency response. The Police Services Scope of Work is attached to this Agreement as Exhibit C. Through June 30, 2023, the Alameda Police Department shall invoice the Authority on a monthly basis for additional services at the prices set forth on the attached Exhibit D. The Authority shall remit payment to the City no later than thirty (30) business days after receipt by Authority of the monthly reports for policing services described in the Police Services Scope of Work."

5. **Authority Record Retention.** In addition to the record retention rights set forth in Section 10 of the Services Agreement, the Authority shall have the right to retain copies of all records arising out of or related to the services provided by the Authority under the Services Agreement, as amended, for a period of six years and three months after the expiration or earlier termination of the Services Agreement, for the purpose of auditing or inquiries relating to the work completed by the Authority.

6. **Noticing Requirement for Amendments.** In addition to the requirements set forth in Section 15 of the Services Agreement, due to the complex nature of the services provided under the Services Agreement and the need to ensure continuity of services, any request to amend or modify the Services Agreement by a Party shall be in writing and delivered to the other Party no later than 90 days prior to the effective date of such amendment or modification. All modifications and amendments shall be mutually approved in writing by both Parties.

7. **Reduction in Authority Funding.** In the event funds appropriated and available to the Authority from the City for the Revised Housing Services Scope of Work set forth in Exhibit B fall below \$300,000 per fiscal year as evidenced by a City Council approved budget, the Authority shall have the right, but not the obligation, upon ninety days prior written notice to City ("Ninety Day Termination Notice"), to terminate the Services Agreement. During such ninety day noticing period City shall continue to pay Authority no less than \$75,000 as required under the Services Agreement until the expiration of such ninety day noticing period. During the ninety day noticing period Section 5 and Exhibit D of the Service Agreement shall continue to apply. Upon the expiration of such ninety day noticing period, as set forth in the Ninety Day Termination Notice, the Services Agreement shall automatically terminate and be of no further force and effect, except for those provisions, which by their terms, survive the expiration or early termination of the term.
8. **Assignment; Termination of Existing Third Party Contracts.** To ensure continuity of services in connection with the Revised Housing Services Scope of Work attached to the Services Agreement as Exhibit B, the Authority shall assign and the City shall assume the Authority's rights and obligations under the following contracts, subject to consent by such third-party vendor (collectively, the "Authority Assigned Contracts"):
 - a. That certain Consultant Services Agreement between Authority and Hello Housing dated January 23, 2019 shall be assumed by City, effective August 1, 2020; and
 - b. That certain Consultant Services Agreement between Authority and Colleen M. Lopez and Daniel B. Lopez dated May 16, 2019 shall be assumed by City, effective August 1, 2020.

City and Authority shall enter into an Assignment and Assumption Agreement, prepared by City and approved in form and substance by Authority, wherein Authority assigns all its rights and obligations under the Authority Assigned Contracts and City assumes all rights and obligations from Authority under the Authority Assigned Contracts. Once assigned, Authority shall have no further rights or obligations under such Authority Assigned Contracts. Any extensions of terms under the Authority Assigned Contracts shall require the prior written consent of Authority, and shall not exceed the 5 year maximum term requirement set forth in Section 10.8.C. of the U.S. Department of Housing and Urban Development (HUD) Procurement Handbook for Public Housing Agencies (HUD Handbook 7460.8 Rev 2, dated 2/2007) ("HUD Procurement Handbook").

That certain contract between Authority and Quadel Consulting dated on or about July 1, 2015, providing Community Development Block Grant (CDBG) consultant services shall terminate by its terms on June 30, 2020. Authority will either release a Request for Proposals ("RFP") or secure three bids to procure a new Community Development Block Grant (CDBG) consultant on behalf of the City with the intent to award and enter into a contract on or after to August 1, 2020. Subject to compliance with the City's procurement policies, the HUD Procurement Handbook and 2 CFR Part 200, City may enter into a contract with the successful bidder under the RFP for CDBG consultant services.

Except for the Authority Assigned Contracts, any and all remaining contracts entered into by the Authority and third-party vendors/consultants prior to August 1, 2020 used solely

in connection with Authority's implementation and administration of the Services Agreement may be terminated by Authority effective July 31, 2020.

9. **Staff and Administrative Costs During Transition.**

Through July 31, 2020, Authority shall have the right to continue to charge all staff time and administrative costs relating to the transition of work and services contemplated by the parties under this First Amendment to the applicable program to which such transition activity applies. City shall remit payment to Authority for all such staff time and administrative costs no later than 30 days after receipt of an invoice from the Authority.

10. **Exhibit A Budget.** The Budget attached as Exhibit A to the Services Agreement is hereby deleted in its entirety and replaced with the Revised Budget attached hereto as Attachment No. 1 and incorporated herein by this reference.

11. **Exhibit B Housing Services Scope of Work.** The Housing Services Scope of Work attached to the Services Agreement as Exhibit B is hereby deleted in its entirety and replaced with the Revised Housing Services Scope of Work attached hereto as Attachment No. 2 and incorporated herein by this reference.

12. **Exhibit E Transition Plan.** Due to the complex nature of the scope of services being transitioned from the Authority to the City and to ensure continuity of such services, the Parties have developed a Transition Plan. The Parties shall complete each obligation no later than the date set forth in the Transition Plan. The Transition Plan may be modified by mutual written agreement of the Authority's Executive Director and the City Manager without formal amendment of the Services Agreement. The Services Agreement is hereby amended to add the Transition Plan as a new Exhibit E, which is attached hereto as Attachment No. 3 and incorporated herein by this reference.

13. **Miscellaneous.**

a. **Further Cooperation.** The Parties agree to execute such other instruments, agreements and amendments to documents as may be necessary or appropriate to effectuate this First Amendment.

b. **Interpretation.** This First Amendment, when combined with the Services Agreement, sets forth and contains the entire understanding and agreement of the Parties. There are no oral or written representations, understandings, or ancillary covenants, undertakings or agreements, which are not contained or expressly referred to within the Services Agreement and this First Amendment.

c. **Attachments.** Each of the attachments and exhibits attached or to be attached to this First Amendment are incorporated in this First Amendment by this reference.

d. **Effectiveness of Service Agreement.** Except as modified and amended by this First Amendment, all other terms and conditions of the Services Agreement remain unmodified and in full force and effect.

e. Counterparts. This First Amendment may be signed by the Parties in counterparts, each of which will be an original but all of which together will constitute one and the same agreement.

REMAINDER OF PAGE INTENTIONALLY BLANK

SIGNATURES ON FOLLOWING PAGE

DRAFT

IN WITNESS WHEREOF, City and Authority have executed this First Amendment as of the Effective Date set forth in the introductory paragraph above.

"CITY"

CITY OF ALAMEDA
A municipal corporation

By: _____
Eric J. Levitt, City Manager

Approved as to form:
City Attorney

By: _____
Michael Roush,
Chief Assistant City Attorney

"AUTHORITY"

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

By: _____
Vanessa M. Cooper, Executive Director

Approved as to form:
Goldfarb and Lipman LLP

By: _____
Jhaila R. Brown, General Counsel

DRAFT

ATTACHMENT NO. 1

EXHIBIT A TO THE SERVICES AGREEMENT

REVISED BUDGET

(behind this page)

DRAFT

Budget attachment for revised services agreement - June 2020

		228	266		
Fund balance (est.)	Starting Balance	\$ 623,000	\$ 747,000		
	minus Hello Housing @ \$55k per year	\$ (165,000)	\$ -		
	minus City Overhead at \$11k per year	\$ (33,000)	\$ (33,000)		
	minus Est. Payments to AHA for March through June 3	\$ (56,000)	\$ (5,853)		
	Est. Balance	<u>\$ 369,000</u>	<u>\$ 708,147</u>		
AHA salaries and costs (paid to AHA)	Budgeted for 2020-21 (interim)	\$ 286,568	\$ 18,674	\$ 305,242	
	Est. budget for 2021-22	TBD	TBD	\$ 305,242	
	Est budget for 2022-23	TBD	TBD	\$ 305,242	
	Est. Budget for 3 years	<u>TBD</u>	<u>TBD</u>	<u>\$ 915,726</u>	
Police services (paid to City)	Budgeted for 2020-21 (interim)	\$ 210,000			
	Est. budget for 2021-22	\$ 210,000			
	Est budget for 2022-23	\$ 210,000			
		<u>\$ 630,000</u>			

0
0

ATTACHMENT NO. 2

EXHIBIT B TO THE SERVICES AGREEMENT

REVISED HOUSING SERVICES SCOPE OF WORK

(behind this page)

DRAFT

REVISED HOUSING SERVICES SCOPE OF WORK

1. Services to be Provided by Authority

A. The Authority shall perform the following work:

- i. Provide the City Council with revisions to the existing Board of Commissioners' approved five year Affordable Housing Development Pipeline Report no later than April 30, 2021 to cover the final two years of the Services Agreement.
- ii. Utilize the Affordable Housing Unit/Fee and Affordable Housing In-Lieu Funds (Fund 228 and Fund 266, respectively) to develop affordable housing consistent with the City's five-year affordable housing development pipeline. For example, Authority may use these Funds to pay for Authority staff, staff related costs including office space, training, salaries and benefits as well as consultant (and other third party) costs related to feasibility analyses, property acquisition, due diligence, pre-development, and construction of housing and related on-site and off-site infrastructure improvements.
- iii. Procure services and approve payment of invoices related to items 1.A i. and 1. A ii. above up to the approved budget amount set out in Exhibit A for fiscal year 2020/2021, and up to the approved budget amounts as will be established for fiscal years 2021/2022 and 2022/2023.
- iv. Prepare and administer the bi-annual budgets for Fund 228 and Fund 266. (The approved budget for those Funds for fiscal year 2020/2021 is attached as Exhibit A.)
- v. Approve contracts concerning Fund 228 and 266 up to \$75,000 and prepare City Council agenda items for contracts utilizing these Funds above \$75,000.
- vi. Invoice the City on a quarterly basis for the use of Authority facilities and equipment as set forth in Section 2. A. iii. below.

B. The Authority may, but shall not have the obligation, to perform the following work:

- i. If asked in writing by City, on a project-by-project basis, in the sole discretion of the Authority, contract with the City for project management of Community Development Block Grant or HOME Program residential rehabilitation projects or other capital improvement projects undertaken by the City or non-profit organizations. The Authority reserves the right to charge a fully loaded fee per hour, including over-head and supervision, for this work in such amount as determined by Authority in its discretion.
- ii. If asked in writing by City, in the sole discretion of the Authority, serve as the City's development partner to fulfill a market rate developer's inclusionary housing obligation and negotiate any required affordable housing agreement and construct, own and operate any related inclusionary project. This work may also be carried out by a third-party affiliate of the Authority.

2. Services to be Provided by City

A. The City shall perform the following work:

- i. Other than the City's administrative costs to service programs funded through Fund 228 and Fund 226, delegate authority to the Authority's Executive Director or designee to administer all or part of Fund 228 and Fund 266 and to approve and incur expenses related to the services set forth in Section 1 (Services to be provided by Authority) above.
- ii. Subject to the City's approved budget for the services set forth in Section 1 (Services to be provided by Authority) above, provide reimbursement for salaries and benefits for the services set forth in Section 1 (Services to be provided by Authority) above, including workers compensation, pension, medical insurance, life insurance, long term disability insurance, dental insurance and all other salaries and benefits for Authority's employees that carry out such services.
- iii. Subject to the City approved budget and City's appropriating funds for the services set forth in Section 1 (Services to be provided by Authority) above, compensate and reimburse Authority for all expenses for the use of Authority office space provided to administer the housing programs set forth in Section 1. above within the Authority offices, including rent and utilities, use of equipment, postage, etc. Rent and utilities will be based on the proportion of office space provided to administer Fund 228 and Fund 266; supplies and training costs will be based on actual expenditure.
- iv. Subject to the City approved budget and City's appropriating funds for the services set forth in Section 1. above costs related to feasibility analyses, property acquisition, due diligence, pre-development, and construction of housing and related on-site and off-site infrastructure improvement
- v. Remit payment to the Authority in full within 30 days of the City's approval of Authority's invoice.
- vi. Pay an hourly consulting fee of \$180 per hour per employee in 15 minute increments for all requests received, meetings or other work performed after August 1, 2020 for the programs that have transferred back to the City, including but not limited to technical assistance, public records requests and work for audits. All and any such requests must be made in writing to the Authority's Executive Director or the Authority's Deputy Executive Director.
- vii. Effective August 1, 2020, the City shall assume all programmatic and other U.S. Department of Housing and Urban Development (HUD) requirements and responsibilities including, but not limited to, Limited English proficiency (LEP) responsibilities including, but not limited to, updating the Language Access Plan (LAP) ensuring availability of translation and interpretation services, a designated 504 coordinator and ensuring all procurement occurs pursuant to HUD guidelines and 2 CFR Part 200.

The City may:

- i. On a project-by-project basis and subject to the prior written approval of Authority in the Authority's sole discretion, contract with the Authority for project management of Community Development Block Grant or HOME Program residential rehabilitation projects or other capital improvement projects undertaken by the City or non-profit organizations. The City shall pay all fully loaded per hour fees required by Authority for all work performed, which per hour fees shall include, but not be limited to, costs attributed to salary, vacation, benefits and supervision.
- ii. Subject to the prior written approval of Authority in the Authority's sole discretion, designate the Housing Authority as the City's development partner to fulfill a market rate developer's inclusionary housing obligation and negotiate any required affordable housing agreement and construct, own and operate any related inclusionary project. This work may also be carried out by a third-party affiliate of the Authority.

DRAFT

ATTACHMENT NO.3

EXHIBIT E TO THE SERVICES AGREEMENT

TRANSITION PLAN

(behind this page)

DRAFT

TRANSITION PLAN

ACTION	DATE/DURATION
Both Parties Will:	
Meet every two weeks in June and July to discuss the handover to ensure a smooth transition	Until August 1, 2020
Inform the other promptly if there are any additional projects, requests or audits during the contract period	July 1, 2020 to June 30, 2023
Respond promptly to the other party	Until November 1, 2020
Mutually message the transfer of services to the public. Messaging shall be consistent.	Until June 30, 2023
Authority Will:	
Provide a full electronic set of key documents relating to the programs	No later than July 31, 2020
Inform all contractors in writing about the transfer of the administration of affordable housing services under the Services Agreement from Authority to City pursuant to the First Amendment	No later than July 31, 2020
Terminate or cause assignment of contracts between Authority and third-parties (subject to vendor consent) relating to the affordable housing services formerly performed by Authority under the Services Agreement. Authority to determine whether a contract will be assigned or terminated pursuant to Section 8. of the First Amendment.	No later than July 31, 2020
Provide a check list of documents being transferred to City.	No Later than July 31, 2020
Inform all stake holders of the changes and provide the City with a copy of the letter and list to whom it was sent.	No later than July 31, 2020
Complete all reporting that is due by July 31 for the programs that are transitioning.	No later than July 31, 2020
City Will:	

Deliver to Authority for review and approval an Assignment and Assumption Agreement wherein Authority assigns and City assumes certain rights and obligations under the Authority Assigned Contracts pursuant to Section 8 of the First Amendment.	No later than June 30, 2020
Ensure prompt payment to all contractors where contract assigned.	No later than the payment due date set forth in the respective contract.
Acknowledge receipt of all records received	No later than September 1, 2020
Immediately return any records that are inadvertently and erroneously transferred	No later than 5 business day after becoming aware of such inadvertent/erroneous transfer
Approve an invoice for all accrued paid leave as of October 2020 for the proportion of the FTE charged to HOME/CBDG/BMR.	No later than September 30, 2020
Complete all reporting and activities that are due from August 1, 2020	Commencing August 1, 2020
Post CDBG/HOME Employee classifications with City	No later than July 1,2020