



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

Chris Bazar
Agency Director

Agenda Item _____ June 30, 2020

June 16, 2020

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Room 110

Hayward, California
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Honorable Board of Supervisors
Administration Building
1221 Oak Street, Suite 536
Oakland, California 94612

Dear Board Members:

SUBJECT: APPROVE PROCUREMENT NO. 20367 WITH BROOKLYN BASIN ASSOCIATES III, L.P. FOR \$9,698,000 IN MEASURE A1 RENTAL HOUSING DEVELOPMENT BOND FUNDS FOR FOON LOK WEST AFFORDABLE HOUSING PROJECT

RECOMMENDATION:

- A: Approve a contract (Procurement Contract No. 20367) with Brooklyn Basin Associates III, LP (Principal: Jan M. Lindenthal; Location: Foster City), a California limited partnership created by MidPen Housing Corporation, a California non-profit benefit corporation and non-profit housing developer, to develop Foon Lok West (formerly known as Brooklyn Basin Parcel A), an affordable housing project located in Oakland, with Measure A1 Bonds from the North County Regional Pool allocation, for the term 6/30/2020- 6/29/2024 in the amount of \$9,698,000; and
- B: Authorize the Agency Director, or his designee, to authorize payments in accordance with adopted policies to the approved contract's Limited Partner (L.P.) escrow account in order to wire funds into escrow for loan closing and allow for the execution of escrow instructions and loan documents to aid in completing construction finance closing for the approved rental housing project; and
- C: Authorize and approve the County Housing and Community Development Regulatory Agreement for the project to be recorded against the leasehold interest in that certain real property located at 311 9th Ave., Oakland, CA in a senior position to the bank loan documents.

DISCUSSION/SUMMARY:

Your Board approved an allocation of Measure A1 Regional pool funding for the Foon Lok West (formerly known as Brooklyn Basin Parcel A1) -affordable housing project in the amount of \$9,698,000 via Resolution No. R-2019-69 on February 5, 2019 (Item No. 5.1) These funds will be used to construct a Permanent Supportive Housing Project with one-hundred thirty (130) units.

Foon Lok West is a new construction affordable rental housing development located at 311 9th Ave. in the City of Oakland. Foon Lok West will be a multi-phased development for families and seniors located in the Brooklyn Basin master planned community South of Jack London Square in the City of Oakland. The site consists of two parcels jointly owned by the City of Oakland and the Oakland Housing Authority known as Parcel F and Parcel A. Foon Lok West is the first of two phases of construction at Parcel A. The project will provide a total of 130 units, 129 affordable housing units and 1 manager unit, to serve lower income workforce and homeless households. This project will offer twenty-six (26) one-bedroom units serving homeless households at or below 20% AMI. These units are set aside for referrals from the Alameda County Coordinated Entry System. The remaining one-hundred three (103) restricted units are composed of units ranging from one to three bedrooms and will serve lower income workforce households earning between 30% to 60% AMI. The lower income workforce units consist of:

- five (5) one-bedroom units, eleven (11) two-bedroom units, and ten (10) three-bedroom units at or below 30% AMI,
- eight (8) one-bedroom units, eleven (11) two-bedroom units, and eighteen (18) three-bedroom units at 50% AMI, and
- nine (9) one-bedroom units, twelve (12) two-bedroom units, and nineteen (19) three-bedroom units at 60% AMI.

Foon Lok West has a commitment of sixty-five (65) Project-Based Section 8 Vouchers from the Oakland Housing Authority. MidPen Services, a 501c3 non-profit organization affiliate of MidPen Housing Corporation will provide extensive services to the residents.

Per the adopted implementation policies, Community Development Agency's (CDA) Housing and Community Development Department (HCD) issued a Notice of Funding Availability (NOFA) and competitive Request for Proposals (RFP) for the Regional Pool allocations of Measure A1 Bond Funds for the North, South, East, and Mid-County Regions on October 1, 2018. Along with 17 other projects, Foon Lok West (formerly known as Brooklyn Basin Parcel A1) was selected and approved for funding commitment from the Measure A1 North County Regional Pool in the amount of \$9,698,000 by your Board on February 5, 2019 (Item No. 5.1).

The City of Oakland has committed \$32,919,700 in matching funds.

SELECTION CRITERIA AND PROCESS:

Per the Measure A1 Implementation Policies adopted by your Board, projects funded from the Measure A1 Rental Housing Development Regional Pools are selected through competitive Request for Proposals (RFP) processes administered by HCD.

On September 24, 2018, your Board's Health Committee approved the minimum threshold requirements and evaluation criteria to be included in the first Measure A1 Regional Pool RFP. The thresholds and ranking criteria were designed to incentivize the development of units for extremely low-income households and permanent supportive housing units for the homeless, as well as to select developments that were financially feasible and ready to proceed to construction, in order to be competitive for other financing sources such as the State of California's Affordable Housing and Sustainable Communities Program (AHSC), No Place Like Home (NPLH), and the Low Income Housing Tax Credit (LIHTC) Program. On October 1, 2018, HCD released the NOFA and RFP for all four Measure A1 Regional Pools per the Implementation Policies adopted by your Board.

Twenty-five (25) applications were received for Measure A1 Regional Pool funding, totaling \$213,593,105 in funding requests. Commitments to 18 projects, including the project this contract implements, were approved by your Board on February 5, 2019 (Item No. 5.1). The funding for this project falls under the Measure A1 North County Regional Pool. The balance of Measure A1 Bond funds in the North County Regional Pool are \$2,023,371. HCD is currently in the process of reviewing options for allocating these funds either based on the previous RFP or a new RFP.

The contract before your Board today is for acquisition and construction and is not subject to Small, Local and Emerging Business (SLEB) requirements per the GSA's Office of Acquisition and Policy.

Your Board required Prevailing Wage requirements for all Measure A1 funded rental development projects when it placed the Affordable Housing General Obligation Bond on the ballot in June 2016. On November 7, 2017 (Item No. 14.2), your Board authorized additional Wage, Workforce and Contracting policies for Measure A1 on November 7, 2017. Wage, Workforce and Contracting Policies for Measure A1-financed Rental Development Affordable Housing Projects are: 1) payment of State prevailing wages; 2) 30% Local Hire and 5% Disadvantaged Hire as a percentage of all construction hours worked on the Project; 3) 25% Local Business contracting and 20% Small Local Business Contracting as a percentage of the Measure A1 contract award from HCD; and 4) reporting on Federal Housing and Urban Development (HUD) Section 3 and HUD Minority-Owned and Woman-Owned Businesses (MBE/WBE). Additionally, projects with 80 or more units for new construction must have a private Project Labor Agreement, which the County will not be party to. This project contains 130 total units and therefore is subject to the PLA requirement.

FINANCING:

Department ID 260351 was created for the Measure A1 Rental Housing Development Program. Funding is available from the first issuance of Measure A1 bonds for this contract (\$9,698,000). The Rental Housing Development Program has a projected total allocation of \$425 million from the \$580 million Bond.

There is no increase in Net County Cost as a result of this action.

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VISION 2026:

The approval of this procurement contract with Brooklyn Basin Associates III, L.P. for the Foon Lok West affordable housing project meets the 10X goal pathway of **Eliminate Homelessness** in support of our shared visions of **Thriving and Resilient Populations** and **Safe and Livable Communities**

Very truly yours,

DocuSigned by:



002C10B338294FA

Chris Bazar, Director
Community Development Agency

cc: Susan S. Muranishi, County Administrator
Donna R. Ziegler, County Counsel
Melissa Wilk, Auditor-Controller
Jennifer Schulz County Administrator's Office
Heather M. Littlejohn, Office of the County Counsel
Sandra Rivera, Community Development Agency

**CONTRACT FOR THE USE OF
MEASURE A1 AFFORDABLE HOUSING BOND FUNDS
BETWEEN
BROOKLYN BASIN ASSOCIATES III, L.P. AND THE COUNTY OF ALAMEDA**

THIS Contract is made and entered into this 30th day of June 2020, by and between the COUNTY of ALAMEDA, referred to as "COUNTY" and Brooklyn Basin Associates III, L.P. referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY desires to contract with CONTRACTOR regarding the development of affordable housing in Alameda County, as set forth in more detail in Exhibit A, attached hereto; and

WHEREAS, on November 8, 2016, the voters in Alameda County passed the Measure A1 Affordable Housing Bond (the "Ballot Measure"), which provides for the issuance of bonds for affordable housing programs countywide (the "A1 Bonds"); and

WHEREAS, consistent with Article 13A, Section 1 of the California Constitution, proceeds from the A1 Bonds ("A1 Bond Funds") may only be used for the acquisition or improvement of real property; and

WHEREAS COUNTY's Housing and Community Development Department ("HCD") is implementing the Rental Housing Programs of the A1 Bonds, and on November 7, 2017, COUNTY Board of Supervisors adopted Implementation Policies to govern the Rental Housing Programs of the A1 Bonds (the "Implementation Policies"); and

WHEREAS, consistent with the terms of the Ballot Measure and the Implementation Policies, the A1 Bond Funds may only be used to provide affordable local housing and to prevent displacement of vulnerable populations; and

WHEREAS, CONTRACTOR desires to construct an affordable housing development, including one-hundred thirty (130) units of housing with one-hundred twenty-nine (129) affordable units for rent to extremely low-income and low-income households, and one (1) manager unit on certain real property located at 311 9th Ave. in the City of Oakland, County of Alameda (the "Project"), also referred to as Foon Lok West; and

WHEREAS, on February 5, 2019, by Resolution Number R2019-69, COUNTY approved an allocation of A1 Bond Funds to provide financing for the Project in an amount of up to \$9,698,000 (*Nine Million, Six Hundred Ninety-Eight Thousand Dollars*) to further the purposes of the A1 Bonds (the "A1 Bond Loan"); and

WHEREAS, pursuant to Resolution 2017-71, adopted by COUNTY on March 7, 2017, COUNTY authorized the reimbursement of certain eligible costs with the A1 Bond Funds; and

WHEREAS, COUNTY and CONTRACTOR have entered or will enter into Loan Documents (defined in Exhibit A below) governing the use of the A1 Bond Loan proceeds of up to \$9,698,000 (*Nine Million, Six Hundred Ninety-Eight Thousand Dollars*) for the Project; and

WHEREAS, CONTRACTOR is willing and able to develop the Project which has been determined by COUNTY to be necessary or appropriate for the welfare of residents of the COUNTY; and

WHEREAS, COUNTY desires that CONTRACTOR develop the Project, and CONTRACTOR agrees to develop the Project, as more particularly set forth below:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED as follows:

1. Attached as Exhibit A is a description of the Project, and CONTRACTOR agrees to develop the Project in compliance with all provisions set forth in Exhibit A.
2. COUNTY has allocated a total of up to \$9,698,000 (*Nine Million Six Hundred Ninety-Eight Thousand Dollars*) of Measure A1 Funds to be expended under this Contract. Terms and conditions for payment and disbursement are attached in Exhibit B, and CONTRACTOR agrees to seek payment and disbursement in compliance with all provisions set forth in Exhibit B.
3. The term of this Contract begins on June 30, 2020 and ends on June 29, 2024 or when all Contract terms have been completed, whichever occurs first. CONTRACTOR shall meet the timelines for the specific tasks designated in Section 8 of Exhibit A, provided that HCD's Housing Director or his or her designee (the "Housing Director") shall have the authority to amend such timelines as may be reasonably necessary, without further action or authority by the legislative body of COUNTY.
4. CONTRACTOR shall maintain on a current basis full, complete and appropriate books, records and accounts relating to the Project, including all such books, records, invoices, receipts, and accounts necessary or prudent to evidence and substantiate in full detail CONTRACTOR's use of the A1 Bond Loan funds and CONTRACTOR's compliance with the terms, provisions, covenants and conditions of this Contract, to assure proper accounting of funds and performance of this Contract in accordance with instructions provided and to be provided by COUNTY. CONTRACTOR shall comply with all such instructions.
5. To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its Board of Supervisors, officers, employees and agents (collectively "Indemnitees") from and against any and all claims, losses, damages, liabilities or expenses, including reasonable attorney fees, incurred in the defense thereof which arise out of or are in any way connected with this Contract and the acts and omissions of CONTRACTOR and any subcontractors and persons either directly or indirectly employed by them (collectively "Liabilities"), except where such Liabilities are proximately caused solely by the negligence or willful misconduct of any Indemnitee. The provisions of this section survive the termination of this Contract and are not limited by the provisions relating to insurance set forth in this Contract.

6. COUNTY, with prior written notice of 14 calendar days to CONTRACTOR, may at any time during the term of this Contract conduct an evaluation of the CONTRACTOR's performance with respect to this Contract. CONTRACTOR shall maintain and retain records with respect to such evaluations and shall cooperate with COUNTY in making these or any other evaluation reports; CONTRACTOR shall permit access by COUNTY to the site of the Project, shall furnish all information requested by COUNTY, and shall afford COUNTY access to all such records of CONTRACTOR.

7. CONTRACTOR shall be as fully responsible to COUNTY for the acts and omissions of any subcontractors, and of persons either directly or indirectly employed by them, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR may transfer its interest in this Contract (whether by assignment or novation) only with prior written approval of COUNTY. No party shall, on the basis of this Contract, in any way contract on behalf of, or in the name of, the other party to the Contract, and any attempted violation of the provisions of this sentence shall confer no rights and shall be void.

8. Neither the CONTRACTOR nor any of its employees shall by virtue of this Contract be an employee of COUNTY for any purpose whatsoever, nor shall it or they be entitled to any of the rights, privileges, or benefits of COUNTY employees. CONTRACTOR shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it undertakes the development of the Project as required by the terms of this Contract. CONTRACTOR assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment related to the development of the Project.

9. CONTRACTOR agrees to maintain the confidentiality of any information which may be obtained in the course of the development of the Project. COUNTY shall respect the confidentiality of information furnished by CONTRACTOR to COUNTY, consistent with the California Public Records Act and other applicable law.

10. CONTRACTOR shall comply with all applicable laws, ordinances, and codes of Federal, State and local governments, in performing any of the work embraced by this Contract.

11. CONTRACTOR agrees to comply with all requirements which are now, or which may hereafter be, imposed by COUNTY that are consistent with this Contract and applicable laws and regulations. CONTRACTOR agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal programs without prior written approval of COUNTY. Further, CONTRACTOR agrees that upon the return of any funds granted, loaned, or otherwise distributed by the CONTRACTOR that COUNTY paid to CONTRACTOR under this Contract, or the receipt of any funds by CONTRACTOR as a direct result of any funds granted, loaned or otherwise distributed by CONTRACTOR that COUNTY paid to CONTRACTOR under this Contract, CONTRACTOR shall return the funds to COUNTY, unless COUNTY otherwise directs in writing.

12. CONTRACTOR agrees that it will comply with the (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) the United States Fair Housing Act, as amended, (iv) the Americans With Disabilities Act of 1990, and (v) Title VII of the Civil Rights Act of 1964 as amended, and that no person in the United States shall, on the grounds of race, creed, color, disability, sex, sexual orientation, ancestry, national origin, age, religion, Vietnam era veteran's status, political affiliation, marital status, family status, source of income, HIV/AIDS, or any other arbitrary basis be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available by COUNTY pursuant to this Contract.

13. CONTRACTOR shall not, during the term of this Contract, without obtaining the prior written consent of COUNTY, permit any member of the governing board of the CONTRACTOR to perform for compensation any administrative or operational functions for CONTRACTOR with respect to the performance of this Contract (including, but not by way of limitation, fiscal, accounting, or bookkeeping functions).

14. COUNTY and CONTRACTOR agree to abide by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards stated in 2 Code of Federal Regulations (CFR) Part 200, to the extent applicable.

15. In conjunction with performance of this Contract, CONTRACTOR has been made cognizant of and will comply with, all applicable affirmative action, Equal Employment Opportunity Practices Provisions and equal opportunity guidelines and requirements of the federal, state or local government. CONTRACTOR will use its best efforts to utilize Minority-Owned and Woman-Owned Business Enterprises (MBE/WBE) and ensure that MBE/WBEs have equal opportunity to compete for subcontractor work under this Contract. CONTRACTOR shall maintain records documenting data on the race, ethnicity, and single-headed household status (by gender of household head) of households applying for or benefiting from COUNTY-funded activities, on actions taken to affirmatively further fair housing, and on outreach to MBE/WBEs, including data indicating the racial/ethnic or gender character of each business receiving a subcontract of \$25,000 or more paid with COUNTY funds.

16. CONTRACTOR shall also document which households fall under any of the following categories: homeless household; chronically homeless household; homeless household where the head of household or member is a person with disabilities; senior household; veteran household; household where the head or a member is a person with disabilities, including physical and developmental disabilities and mental illness; household where the head of household or a member is re-entering the housing market from jail or another institutional setting; and household where the head of household is a transition-age youth aging out of foster care, where applicable to demonstrate compliance with COUNTY funding requirements.

17. CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free work-place. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and

amphetamines, at any COUNTY facility or COUNTY-funded work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at the site of the Project, the CONTRACTOR within five days thereafter shall notify the Housing Director. Violation of this provision shall constitute a material breach of this Contract.

18. Time is of the essence in each and all provisions of this Contract.

19. CONTRACTOR shall maintain, at all times during the term of this Contract, the insurance and bonding documentation described in the Loan Documents (defined below) and Exhibit C to this Contract and shall comply with all other requirements set forth in that Exhibit. CONTRACTOR shall also secure (through fencing, secure doors, security services or otherwise) the site of the Project at all times during the term of this Contract including but not limited to during construction of the Project.

20. CONTRACTOR agrees to maintain the property in good condition and repair, free of debris and waste.

21. If, through any cause, CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, COUNTY shall have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date of such termination. Without prejudice to the foregoing, CONTRACTOR agrees that if, prior to the termination or expiration of this Contract, upon any final or interim audit by COUNTY, COUNTY finds that CONTRACTOR has failed to fulfill its obligations under this Contract in a timely and proper manner, that CONTRACTOR shall forthwith bring itself into compliance and shall pay to COUNTY forthwith whatever sums are so disclosed to be due to COUNTY (or shall, at COUNTY's election, permit COUNTY to deduct such sums from whatever amount remains undisbursed by COUNTY to CONTRACTOR pursuant to this Contract); if this Contract shall have terminated or expired, and it shall be disclosed upon such audit, or otherwise, that such failure shall have occurred, CONTRACTOR shall pay to COUNTY forthwith whatever sums are so disclosed to, or determined by, COUNTY to be due to COUNTY, or shall, at COUNTY's election, permit COUNTY to deduct such sums from whatever amounts remain undistributed by COUNTY to CONTRACTOR pursuant to this or any other contract between COUNTY and CONTRACTOR. Anything in this Contract to the contrary notwithstanding, until the Loan Documents are executed by both COUNTY and CONTRACTOR, COUNTY or CONTRACTOR shall have the right to terminate this Contract with or without cause at any time upon giving at least 30 calendar days' written notice prior to the effective date of such termination. This condition for termination of this Contract may be modified by mutual consent of both parties.

22. As part of the Implementation Policies for the Measure A1 Rental Housing Development Fund, COUNTY has adopted Prevailing Wage, Workforce and Contracting Policies ("A1 Labor and Contract Compliance Policies") that apply to all tiers of construction contractors working on A1 Bond funded projects. CONTRACTOR shall and shall cause the general construction contractor and construction contractors at all tiers working on the Project to, comply with

Measure A1 Labor and Contract Compliance Policies in the Measure A1 Labor and Contract Compliance Policies and Procedures Manual. CONTRACTOR's contract with the general construction contractor shall include provisions requiring compliance with the A1 Labor and Contract Compliance Policies, which set goals and outreach requirements for construction hours worked by Local and Targeted Disadvantaged Workers and dollars of A1 Bond Funds contracted to Local and Small Local Businesses. CONTRACTOR shall cause all construction contractors working on the Project to make a good faith effort to meet all goals of the A1 Labor and Contract Compliance Policies. Compliance reports must be submitted monthly to COUNTY during construction of the Project. If noncompliance is found, COUNTY may require the submission of a Compliance Plan, additional outreach if evidence submitted shows inadequate outreach, or correction of incorrect or incomplete compliance reports, and/or may withhold disbursement of A1 Bond Loan funds until any outstanding noncompliance has been corrected or a compliance plan submitted to and approved by HCD. CONTRACTOR will also execute the Measure A1 Labor and Contract Compliance Program Certification, attached as Exhibit D.

23. CONTRACTOR shall comply with the prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 CFR Part 24. If CONTRACTOR has entered into Loan Documents prior to the execution of this Contract, CONTRACTOR has executed the Debarment Certification attached as Exhibit E. If CONTRACTOR has not previously executed the Debarment Certification, CONTRACTOR shall do so as a condition of this Contract.

24. COUNTY has implemented a First Source Hiring Program for COUNTY funded contracts over \$100,000. CONTRACTOR shall identify for the COUNTY the number of new positions resulting from the procurement of this Contract by the CONTRACTOR needed to fulfill this Scope of Work by CONTRACTOR or its general partner if applicable, in accordance with Exhibit F. In addition, the CONTRACTOR shall post any new or vacant position to be filled by CONTRACTOR during the term of this Contract to the COUNTY identified "First Source" system ten (10) working days before advertising to the general public. CONTRACTOR agrees to post any new or vacant position to this system that CONTRACTOR has available during the Contract term. The goal of this provision is to hire local lower income individuals who are seeking positions with developers like CONTRACTOR, receiving COUNTY funding. Details of this provision are outlined in Exhibit F. If CONTRACTOR has entered into Loan Documents prior to the execution of this Contract CONTRACTOR has executed the First Source Hiring Certification attached as Exhibit F. If CONTRACTOR has not previously executed the First Source Hiring Form, CONTRACTOR shall do so as a condition of this Contract.

25. This Contract may be amended only by written agreement of the parties hereto. The followings Exhibits to this Contract are incorporated into this Contract by this reference:

- a. Exhibit A: Alameda County Housing & Community Development Department Contract Terms and Conditions
- b. Exhibit B: Conditions for Disbursement and Payment
- c. Exhibit C: County Minimum Insurance Requirements
- d. Exhibit D: Measure A1 Labor and Contract Compliance Program Certification
- e. Exhibit E: County Debarment and Suspension Certification

- f. Exhibit F: First Source Program Certification
- g. Exhibit G: County Iran Contracting Act Certification

26. The obligations of this Contract, which by their nature would continue beyond the termination on expiration of the Contract, including without limitation, the obligations regarding indemnification (Paragraph 5), responsibility for subcontractors (Paragraph 7), non-discrimination (Paragraph 12), reporting (Exhibit A, Paragraph 18) shall survive termination or expiration of the Contract. Paragraphs 6 and 15 shall survive until such time as the A1 Bond Loan is repaid in full and the related regulatory agreement term has expired.

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SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first mentioned above.

COUNTY:

CONTRACTOR:

COUNTY OF ALAMEDA,

Brooklyn Basin Associates III, L.P.
a California limited partnership

a political subdivision of the State of California

By: MP Brooklyn Basin III, LLC
a California limited liability
company, its general partner

By: _____
President, Board of Supervisors

By: Mid-Peninsula Pickering Inc.
a California nonprofit public
benefit corporation, its sole
manager/member

DATE: _____

DocuSigned by:
Jan M. Lindenthal

Approved as to form:

By: _____
44296B7BFAAD4D5...

Jan M. Lindenthal
Assistant Secretary

Donna R. Ziegler, County Counsel

DocuSigned by:
Heather Littlejohn

6/23/2020

By: _____
4E16CF9B888B421...
Name: Heather M. Littlejohn
Title: Deputy County Counsel

DATE: _____

By signing above, signatory warrants and represents that he/she executed this Contract in his/her authorized capacity and that by his or her signature on this Contract, he or she or the entity upon behalf of which he/she acted, executed this Contract.

EXHIBIT A
ALAMEDA COUNTY HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT
CONTRACT TERMS AND CONDITIONS

1. **Project Details:** CONTRACTOR shall use the A1 Bond Loan funds provided in this Contract to develop the Project currently referred to as Foon Lok West, Parcel No. 018-0465-012, 311 9th Ave. in the City of Oakland. The A1 Bond Funds may only be used for the acquisition or improvement of real property to be used for affordable housing consistent with the Ballot Measure. The Project will be a one-hundred thirty (130)-unit new construction development consisting of one-hundred twenty-nine (129) rental units for households earning at or below 60% AMI and one (1) resident managers unit. Based on the funding provided by COUNTY pursuant to this Contract as allocated to the total Project budget, CONTRACTOR shall ensure that fifty-two (52) of these units will be restricted by COUNTY at the following income levels: twenty-six (26) one bedroom units at 20% AMI and five (5) one-bedroom, eleven (11) two-bedroom, and ten (10) three-bedroom units at 30% AMI. The remaining seventy-seven (77) units are restricted (pursuant to other contracts or requirements outside of this contract) to the following income levels: eight (8) one-bedroom, eleven (11) two-bedroom, and eighteen (18) three-bedroom units at 50% AMI, and nine (9) one-bedroom, twelve (12) two-bedroom, and nineteen (19) three-bedroom units at 60% AMI. Funds may be used for land acquisition, hard costs (construction) and soft costs in accordance with the budget in the Project Budget Exhibit at Page B-8.

2. **NOFA:** If CONTRACTOR applied for the A1 Bond Funds under a competitive Request for Proposals (RFP), CONTRACTOR shall meet all requirements outlined in the Notice of Funds Available (NOFA) to which CONTRACTOR responded and the related RFP documents, unless otherwise approved by the Housing Director.

3. **Loan Amount:** COUNTY has allocated a total of up to \$9,698,000 (Nine Million Six Hundred Ninety-Eight Thousand Dollars) of A1 Bond Funds to be expended under this Contract. The A1 Bond Loan is matched with at least the amount of local funds set forth in the COUNTY's approval resolution.

4. **Contractor Responsibilities:** CONTRACTOR shall have primary responsibility for carrying out all phases of the Project, including but not limited to, securing adequate financing; obtaining land use entitlements and planning approvals; construction; tenant relocation; formulating a services plan appropriate for the disability of the residents; leasing and asset management for the term of the Project regulatory agreement. All actions related to the development of the Project shall be reviewed and approved by the Alameda County Housing and Community Development Department.

5. **Project Meetings:** CONTRACTOR shall meet with HCD staff regarding compliance with COUNTY A1 Bond Fund policies, including but not limited to the Labor and Contract Compliance Policies, prior to the beginning of construction as follows:

A. After selection of the general contractor for the Project, and before the general contractor solicits any hard bids from construction subcontractors, CONTRACTOR, the

general contractor, and any third party monitor shall meet with HCD staff regarding implementation and enforcement of COUNTY A1 Bond Fund policies, including but not limited to the Labor and Contract Compliance Policies, during the construction of the Project.

B. Before the start of construction, CONTRACTOR, the general contractor and HCD shall host a Pre-Construction Meeting for its construction contractors at all tiers for orientation to Labor and Contract Compliance Policies and procedures and participate in a training on the use of the COUNTY's reporting software.

HCD staff may schedule regular meetings during construction to review progress updates.

6. **Insurance:** CONTRACTOR must have its own insurance, including but not limited to general liability, auto, workers' compensation and property insurance. CONTRACTOR shall ensure that the County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and volunteers are named as additional insureds in the General Liability and Automobile Liability Policies, as further set forth in Exhibit C. On-going insurance requirements after construction completion are or will be outlined in the Loan Documents.

If subcontractors are hired at a later date, it is the CONTRACTOR's responsibility to ensure that its subcontractors carry all insurance as required by HCD prior to the start of the construction and throughout construction.

7. **Loan Documents:** CONTRACTOR shall enter into and be bound by a Promissory Note, Regulatory Agreement, Deed of Trust, and Loan Agreement, referred to as "Loan Documents" that meet HCD's current administrative loan terms and policies. CONTRACTOR shall record against the property the Deed of Trust and Regulatory Agreement which shall specify affordability and occupancy levels, term of affordability, maintenance and management standards, and other related requirements as part of the overall agreement between the parties for funding. The Regulatory Agreement will be for a term of at least fifty-five (55) years and will be senior to any other financing documents. In the event of a conflict between this Contract and the Loan Documents, the Loan Documents shall prevail.

8. **Schedule:** CONTRACTOR shall meet specific timelines for the following tasks by the dates set forth below. CONTRACTOR shall provide HCD progress reports regarding compliance with the dates set forth below and shall provide HCD at least fifteen (15) days advance notice if CONTRACTOR will be unable to meet the dates set forth below.

- | | | |
|----|--|----------------------|
| A. | Begin Construction | <u>July 1, 2020</u> |
| B. | Construction Completion | <u>July 1, 2022</u> |
| C. | Certificate of Occupancy | <u>July 1, 2022</u> |
| D. | Close-Out Reporting (see <u>Exhibit B</u> for details) | <u>April 1, 2023</u> |

9. **Environmental Review:** CONTRACTOR shall comply with all requirements under the National Environmental Policy Act (NEPA) (if applicable due to project financing that

includes Federal funds), and California Environmental Quality Act (CEQA). The expenditure of COUNTY funds is contingent upon receiving any required environmental clearance from appropriate government agencies.

10. Relocation: If and to the extent that acquisition and development of the Project will result in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then CONTRACTOR shall comply with Measure A1 Implementation Policies and all applicable local, state, and federal statutes and regulations with respect to preparation of a relocation plan, relocation planning, advisory assistance, and payment of monetary benefits. CONTRACTOR shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

11. Competitive Bidding: COUNTY requires and CONTRACTOR shall implement competitive bidding of all construction and professional services contracts arising from the use of COUNTY funds. Competitive bidding shall be defined as soliciting three or more bids per contract or demonstrating that three or more qualified contractors per contract were not available to solicit.

12. Measure A1 Labor and Contract Compliance Terms and Conditions Overview: The following is an overview of the major terms and conditions of the Measure A1 Labor and Contract Compliance policies and procedures with which CONTRACTOR shall comply and cause the general contractor and all construction contractors at all tiers on the Project to comply. This list is not intended to be exhaustive. Further detail should be reviewed in A1 Labor and Contract Compliance Policies and Procedures Manual.

A. **Prevailing Wages (Federal/Davis-Bacon, State and County):** If the Project is, independent of the A1 Bond Funds, subject to the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. 3141-3148) and/or state prevailing wage pursuant to California Labor Code Section 1720 et seq., through other COUNTY funds or other Project financing, CONTRACTOR shall comply with those federal and/or state mandates that apply to the Project. If the Project is not otherwise subject to federal or state prevailing wage laws, CONTRACTOR shall pay wages equivalent to State prevailing wages. CONTRACTOR shall utilize a third-party monitor to monitor compliance and submit A1 Labor and Contract Compliance Monthly Reports to HCD, which will include documentation of compliance with all applicable federal, state and COUNTY prevailing wage requirements.

B. **Employment of Local and Targeted Disadvantaged Residents:**

a. **Local Hire Goal.** 30% of all construction hours worked on the Project shall be performed by residents of Alameda County.

Targeted Disadvantaged Worker Hire Goal. 5% of all construction hours worked on the Project must be performed by "Targeted Disadvantaged Workers," as defined in the Measure A1 Labor and Contract Compliance Policies and Procedures Manual.

- c. **Outreach Requirements:** CONTRACTOR will ensure that construction contractors at all tiers on the Project follow the A1 Labor and Contract Compliance Policies and Procedures Manual for outreach to Local and Targeted Disadvantaged Workers for potential hire onto the Project and reporting on evidence of completed outreach requirements.
- C. **Contracting with Local and Small Local Construction Businesses:**
 - a. **Local Contracting Goal:** An amount equal to 25% of the amount of the Measure A1 contract shall be paid to Alameda County-based businesses. These businesses may include but are not limited to professional service sub-contracts, the prime general contractor and/or any of the construction related subcontractors.
 - b. **Small Local Contracting Goal:** An amount equal to 20% of the amount of the Measure A1 Contract, shall be paid to certified small Alameda County-based businesses. This goal may overlap with the local contracting goal. State Small Business Enterprise (SBE) certification and Alameda County Small, Emerging and Local Business (SLEB) certification are both acceptable as verification of “small” status of local businesses, as well as all acceptable certifications listed in the A1 Labor and Contract Compliance Policies and Procedures Manual.
 - c. **Outreach Requirements:** CONTRACTOR will ensure that the general contractor on the Project follows procedures outlined in the A1 Labor and Contract Compliance Policies and Procedures Manual for outreach to Local and Small Local Businesses to solicit their bids for contracting opportunities on the Project and reporting on evidence of completed outreach requirements.
- D. **HUD Section 3 Reporting:** CONTRACTOR shall submit a HUD Section 3 report, using form HUD-60002 or the equivalent, to HCD as part of the Closeout Report, regardless whether the Project is subject to Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3").
- E. **Minority-Owned Business Enterprise/Woman-Owned Business Enterprise (MBE/WBE) Reporting:** CONTRACTOR shall use its best efforts to utilize Minority-Owned Business Enterprises and Woman-Owned Business Enterprises (MBE/WBE) and ensure that such enterprises have equal opportunity to compete for subcontractor work under this Contract. CONTRACTOR shall maintain records on MBE/WBE outreach and shall submit documentation to HCD showing such compliance on HUD form HUD-2516 or equivalent.
- F. **Reporting on Measure A1 Labor and Contract Compliance Requirements:**
 - a. **Reporting:** As outlined in Exhibit A (Sections 12(F), 17 and 18), Exhibit D and HCD’s Policies and Procedures Manual for the Measure A1 Labor and Contract Compliance Program, reporting on compliance with these policies shall include but not be limited to the following:
 - i. **Pre-Construction:** Reporting for the Project includes but is not limited to the submission of a contractor outreach plan before the general contractor solicits any hard bids from subcontractors, the submission of a pre-selection plan before subcontractors are offered subcontracts by the

general contractor, and the submission of a Pre-Construction Compliance Plan packet.

ii. **During Construction:** Monthly A1 Labor and Contract Compliance reports must be submitted for the Project during the construction period.

iii. **After Construction:** A Measure A1 Labor and Contract Compliance Closeout Report must be submitted for the Project.

G. **Withholding of Payment on Draws and Reimbursements of A1 Funds:**

a. **Noncompliance:** If the Project is found to be out of compliance after review of any of the above reports, HCD may execute one or more of the following actions:

i. **Compliance Plan:** Require a Compliance Plan to be submitted to HCD for the Project and approved by HCD. This may include but not be limited to requiring additional outreach if evidence submitted shows inadequate outreach, or correction of incomplete or incorrect compliance reports.

ii. **Withholding of Payment on Draws and Reimbursements of A1 Funds:** When HCD has determined that a Project has outstanding noncompliance with any A1 Labor and Contract Compliance policies and procedures that have remained unaddressed and/or uncorrected for 60 days or more, HCD may withhold payment on any requests for draws or reimbursements of A1 Funds, until the noncompliance issues have been corrected or a Compliance Plan has been submitted to and approved by HCD.

b. **Retention:** 60% of the Retention Funds held by HCD will be released to CONTRACTOR upon submission and approval of the Measure A1 Labor and Contract Compliance Closeout Report within 60 days of construction completion, demonstrating full compliance with all applicable requirements. See Exhibit B, Section 7 for further details on the retention amount and conditions for the release of retention.

13. **Accessibility:** CONTRACTOR must meet the requirements of (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) the United States Fair Housing Act, as amended, (iv) the Americans with Disabilities Act of 1990, and (v) Chapters 11A and 11B of Title 24 of the California Code of Regulations, among other local, state, and federal laws. Projects with any federal funds must also meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR 100.205 and Part 8) ("Section 504"). Section 504 sets minimum percentages of accessible units, and calls for fully accessible common areas, among its numerous requirements. Under Section 504, 5% of the total number of units must be accessible to people with physical disabilities, and an additional 2% of units must be accessible to people with auditory and visual disabilities. CONTRACTOR and Project architect must provide final documentation of Section 504 compliance including the accessibility requirements listed above.

14. **Fair Housing Marketing/Lease:** CONTRACTOR must submit a preliminary Management Plan and Affirmative Fair Housing Marketing Plan to HCD. A Property

Management Plan and Affirmative Fair Housing Marketing Plan will be required to be submitted 180 days prior to construction completion and a Resident Services Plan and Resident Services Budget shall be submitted to HCD for approval 90 days prior to construction completion. The final Affirmative Fair Housing Marketing Plan must be approved prior to beginning rent-up activities, including marketing flyers and application materials. CONTRACTOR must adopt tenant selection policies and criteria as required by 24 CFR 92.253 for projects with HOME, HOPWA or CDBG or other federal funding.

The lease between a tenant and CONTRACTOR of a rental unit assisted with the funds under this Contract must be not for less than one year, unless by mutual agreement between the tenant and the owner. CONTRACTOR must abide by all lease terms required by 24 CFR 92.253 for projects with any federal funds.

15. Lead-Based Paint: The use of lead-based paint on COUNTY funded projects, including A1 Bond funded projects, is prohibited. Testing and abatement of lead-based paint in federally funded rehabilitation projects may be required. As applicable, CONTRACTOR shall follow State and Federal guidelines, which require notification to prospective residents of potential lead-based paint hazards, among other requirements.

16. Annual Recertification of Tenant Income: CONTRACTOR shall re-examine tenant incomes annually to ensure that tenants continue to meet the income requirements of COUNTY-funded programs. As required by the Regulatory Agreement, rent schedules and utility allowances, including any increases, must be reviewed and approved annually by HCD and adhere to guidelines of the funding sources. Projects that are also assisted with Low Income Housing Tax Credits or the Multifamily Housing Program will be subject to those relevant rules regarding over-income tenants. Rents and tenant incomes will be submitted to HCD for its annual compliance review.

17. Contract Documents:

- A. The following items are required to be maintained by CONTRACTOR and submitted to HCD prior to the commencement of construction:
- a. Construction Contract with general contractor
 - b. Certificates of Insurance for CONTRACTOR, general contractor, and all contractors working on the Project
 - c. Copy of general contractor license
 - d. Executed Debarment Certification for CONTRACTOR (Exhibit E)
 - e. Measure A1 Labor and Contract Compliance Pre-Construction Compliance Plan Packet
 - f. Executed Measure A1 Labor and Contract Compliance Program Certification (Exhibit D)
 - g. Notice to Proceed to general contractor
 - h. Permits and approvals necessary for commencement of construction
 - i. Final Construction Plans
 - j. Executed Payment and Performance Bonds, as required

- k. Executed First Source Hiring Certification (Exhibit F)
 - l. Executed Iran Contracting Certification (Exhibit G)
- B. The following items are required to be maintained by CONTRACTOR and submitted to HCD upon request:
- a. Inspection Reports by local permitting jurisdiction for Rehabilitation Projects
 - b. Final Work Write Up – Cost Estimation
 - c. General Contractor Bid Documents
 - d. Results of Bids
 - e. General Contractor Eligibility Form
 - f. Lead-based Paint Compliance Documentation
 - g. Asbestos Report (if applicable)
 - h. During Construction:
 - i. Approved Change Orders
 - ii. General Contractor Payment Requests
 - iii. Payment Certifications

18. **Reporting:** CONTRACTOR shall be responsible to HCD for ongoing reports on the progress and condition of the Project.

A. **During Construction** CONTRACTOR shall provide evidence demonstrating compliance with A1 Labor and Contract Compliance requirements and compliance with MBE/WBE, Section 3, State prevailing wage, and Davis Bacon compliance as applicable.

a. **Measure A1 Labor and Contract Compliance Monthly Reports:** CONTRACTOR shall submit monthly labor and contract compliance reports during the construction period, using the templates provided by HCD. See Section 12(F) of the Exhibit and the Measure A1 Labor and Contract Compliance Policies and Procedures Manual for further details on reporting requirements.

b. **Access to all prevailing wage records during and after construction for 5 years:** CONTRACTOR shall make available to the County during the construction period and for at least 5 years after the completion of construction, access to copies of all documents generated from prevailing wage monitoring of this Project.

B. **Construction Phase Close-Out Report** Before HCD shall release retention, CONTRACTOR shall provide the following close-out materials:

- a. Measure A1 Labor and Contract Compliance Closeout Report. This includes but is not limited to the following documents:
 - i. Final cumulative prevailing wage compliance report, verifying full compliance of the Project with all county, state and federal prevailing wage requirements.
 - ii. Final attainment of Local Hire and Disadvantaged Hire, as a percentage of total construction hours worked on the Project. Percentage attainment by

contractor and by trade will also be reported but not measured towards meeting the Project goal.

- iii. Final attainment of Local Business and Small Local Business Contracting goals, both as a percentage of the A1 contract amount and as a percentage of the Project's total construction cost.
 - iv. Verification of compliance by contractor with Local/Disadvantaged Hire outreach requirements (including total worker hours per contractor, verification of outreach completed, verification of valid exemptions under 140 hours).
 - v. Post-Construction Contractor Listing, a revised final contractor listing reflecting final contract dollars paid out to all construction contractors on the Project.
 - vi. Signed final cumulative unconditional waivers/lien releases for every contractor on the project, verifying the total amount of contract dollars they have received for all of their work on the Project throughout the entire construction period.
 - vii. Submission of all outstanding documents past due from previous Monthly Compliance Reports.
 - viii. MBE/WBE HUD report form, completed in Elation.
 - ix. HUD Section 3 report, completed in Elation.
 - x. Instructions on how to access any prevailing wage documents for the Project that will remain on file outside of Elation or LCP Tracker for up to 5 years.
- b. Notice to Proceed
 - c. Final Relocation Report, if applicable
 - d. Evidence of compliance with all NEPA/CEQA requirements
 - e. Final environmental clearance/mitigation documents
 - f. Final documentation of Section 504 compliance by architect (or copy of architect certification to TCAC)
 - g. Final Title 24 report (or copy of Energy Analyst certification for TCAC)
 - h. Final City Building Department Inspection Report
 - i. Certificate of Occupancy
 - j. Recorded Notice of Completion
 - k. IRS Form 8609
 - l. Final Schedule of Sources and Uses of Funds and Independent Auditor's Report with Cost Certification
 - m. LP-10 ALTA Lender's Policy and/or lien releases and final payment certification
 - n. County Housing Project Completion Report, including initial rent-up report)
 - o. Utility Allowance Setup
 - p. Insurance Certificates, as required per loan agreement
 - q. As-built drawings

C. First Year of Operations Quarterly Reports For the first year after the Project is completed, CONTRACTOR shall submit to HCD quarterly reports not more than ninety (90) days after the end of each quarter that year. These reports shall include:

- a. Updates to the County Financial Report

- b. Updates to the County Compliance Report
- c. Updates to the County Occupancy Report (HCD-funded and Section 504 units only)

These requirements will be specified in more detail in the Loan Documents.

D. Operations Phase Annual Reports After the first year, or when the Housing Director determines, an annual report must be submitted not more than sixty (60) days after the end of CONTRACTOR's fiscal year. These reports shall include:

- a. Annual Project audit
- b. Annual Project budget
- c. Updated County Annual Compliance Report
- d. Updated County Annual Financial Report
- e. Updated County Annual Occupancy Report
- f. Insurance Certificates, as required per Loan Agreement

These requirements will be specified in more detail in the Loan Documents. CONTRACTOR's obligations under this subparagraph shall continue until repayment of the A1 Bond Loan and the termination of the Regulatory Agreement.

19. Applicable Laws: CONTRACTOR must comply with all applicable laws, ordinances, codes and regulations. The specific requirements enumerated or summarized in this Exhibit B are for the convenience of the parties. To the extent Exhibit B conflicts with applicable laws, ordinances, codes and regulations, as they may be amended from time to time, the actual text of the laws, ordinances, codes and regulations shall control.

EXHIBIT B
CONDITIONS FOR DISBURSEMENT AND PAYMENT

1. BUDGET

The Project budget as of the date of this Contract and noting which line items are to be funded with COUNTY assistance, is attached as an exhibit on page B-8. The Project budget is subject to the terms and conditions of this Contract, including any repayment or reduction in A1 Bond Loan disbursement due to excess Project financing.

Before any disbursement of A1 Bond Loan funds, CONTRACTOR shall establish a budget, to be approved in writing by HCD, specifying by line item the expenditures to be made with A1 Bond Loan funds. Once a budget is approved by HCD, changes may be made only with a written request to be approved by the Housing Director in advance of a request for disbursement of funds.

2. METHOD OF PAYMENT

All requests for a funding draw or reimbursement will be in a format approved by HCD.

- a. All requests for a funding draw or reimbursement shall be on CONTRACTOR's letterhead, contain an original authorized signature, invoice number, total amount requested, and amounts broken down by line item on the approved budget. This document shall be called an "Invoice", and shall track disbursements made by budget line item, current requests, and amount remaining in the budget line item, as illustrated below:

Line Item	Total Budget	Previous Requests	Current Request	Balance Remaining
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- b. All invoices shall be paid on a funding draw or reimbursement basis and shall be submitted no more than monthly with supporting documentation of actual costs incurred during the period of time covered by the invoice. If under a specific line item, CONTRACTOR has more than one form of back up or supporting documentation, CONTRACTOR must also summarize the documentation and include a subtotal of items which add up to the line item total. Invoices must be properly organized and are subject to return to CONTRACTOR and non-payment by HCD if they are not.

- c. Funding for this Project covers expenses incurred from June 30, 2020.

- d. All funds disbursed to CONTRACTOR must be expended within fifteen (15) days of approval of the receipt of funds. The final disbursement shall be requested by CONTRACTOR not less than sixty (60) days before Project completion.

- e. Any adjustments made by the fiscal auditors at the year-end audit, under the AICPA guidelines and other relevant federal regulations should be brought to the attention of HCD staff for reconciliation.

f. CONTRACTOR is responsible for reporting any required or existing matching funds used on this Project which do not originate from COUNTY sources.

g. Disbursement of A1 Bond Loan funds is subject to the terms and conditions of this Contract as well as the conditions of disbursement set forth in Section 3 below, in addition to any disbursement conditions set forth in the Loan Documents, as they may be amended.

3. CONDITIONS TO DISBURSEMENT

a. Conditions to Disbursement of A1 Bond Loan funds. HCD is not obligated to disburse any portion of the A1 Bond Loan funds unless all of the following conditions have been and continue to be satisfied, as applicable:

(1) There exists no default nor any act, failure, omission or condition that would constitute an event of default under the Loan Documents;

(2) CONTRACTOR possesses a fee/long-term leasehold interest in the Project or is acquiring fee/leasehold title to the Project simultaneously with closing of all financing necessary for the construction of the Project;

(3) CONTRACTOR has provided a copy of its tax credit reservation letter for the Project, signed by California Tax Credit Allocation Committee and accepted by CONTRACTOR, if applicable;

(4) CONTRACTOR has delivered to HCD a copy of a resolution authorizing CONTRACTOR's execution of the Loan Documents;

(5) CONTRACTOR has caused to be executed and delivered to HCD all Loan Documents, the construction management agreement, and any other instruments and policies required under the Loan Documents;

(6) The Loan Documents, which are required to be recorded against the Project pursuant to the Loan Documents, are recorded against CONTRACTOR's interest in the Project, or will be simultaneously with closing of all financing necessary for the construction of the Project;

(7) CONTRACTOR has furnished HCD with evidence of the insurance coverage meeting COUNTY requirements;

(8) HCD has approved the current development budget for the Project;

(9) A title insurer reasonably acceptable to HCD is unconditionally and irrevocably committed to issuing an LP-10 2006 Lender's Policy of title insurance insuring the priority of COUNTY's deed of trust in the amount of the A1 Bond Loan, subject

only to such exceptions and exclusions as may be reasonably acceptable to HCD and containing such endorsements as HCD may reasonably require. CONTRACTOR shall provide whatever documentation (including an indemnification agreement), deposits or surety that is reasonably required by the title company in order for COUNTY's deed of trust to be senior in lien priority to any mechanics liens in connection with any early start of construction;

(10) CONTRACTOR and CONTRACTOR's partners, if any, have executed, and HCD has approved, CONTRACTOR's organizational documents;

(11) As applicable, CONTRACTOR has obtained all permits and approvals necessary for the construction of the Project and HCD has received a copy of the building permits required to construct the Project;

(12) HCD has received and approved the final construction plans for the construction of the Project, as required pursuant to the Loan Documents. The construction plans shall not be considered approved by HCD unless such construction plans are in conformance with all applicable disabled persons accessibility requirements;

(13) HCD has received and approved the general contractor's construction contract that CONTRACTOR has entered for construction of the Project as required pursuant to the Loan Documents;

(14) HCD has received copies of labor and material (payment) bonds and performance bonds as required pursuant to the Loan Documents;

(15) Except for any financing to be provided at Conversion (as defined below), CONTRACTOR has closed, or is closing concurrently with the acquisition of the Project, all other financing to be used for construction approved by HCD in the development budget and is eligible to receive the proceeds thereof in accordance with the terms and conditions evidencing such financing;

(16) COUNTY has issued one or more series of A1 Bonds and has on hand A1 Bond Funds sufficient to fund the A1 Bond Loan;

(17) HCD has determined that the undisbursed proceeds of the A1 Bond Loan, together with other funds or firm commitments for funds that CONTRACTOR has obtained in connection with the Project, are not less than the amount that is necessary to pay for development of the Project and to satisfy all of the covenants contained in the Loan Documents;

(18) HCD has received a written draw request from CONTRACTOR, including certification that the condition set forth in Section (a)(1) continues to be satisfied, and setting forth the proposed uses of funds consistent with the current approved project budget, the amount of funds needed, and, where applicable, a

copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any costs other than costs associated with the acquisition of the Project or hard cost construction of the Project, such disbursement will be made only on a cost reimbursement basis and the disbursement request must be accompanied by receipts that show the bill or invoice has already been paid by CONTRACTOR. When a disbursement is requested to pay any contractor in connection with the construction of the Project, the written request must be accompanied by (i) certification by CONTRACTOR's architect reasonably acceptable to HCD that the work for which disbursement is requested has been completed (although HCD reserves the right to inspect the Project and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to HCD. CONTRACTOR shall apply the disbursement for the purposes requested;

(19) CONTRACTOR has demonstrated full compliance with all Measure A1 Labor and Contract Compliance requirements, as of the second most recent monthly labor and contract compliance report submitted by this Project at the time of the draw request, as described in the A1 Labor and Contract Compliance Policies and Procedures Manual;

(20) CONTRACTOR is in compliance with the First Source Hiring Requirements, as described in Exhibit F;

(21) HCD has received from CONTRACTOR a recorded notice of completion for the Project;

(22) HCD has received from CONTRACTOR copies of the final certificate of occupancy for the Project;

(23) HCD has received from CONTRACTOR a copy of the final City (or County) Building Department inspection;

(24) HCD has received a completion report from CONTRACTOR setting forth (i) the income, household size, and ethnicity of tenants in the Affordable Units in the Project, (ii) the unit size, rent amount and utility allowance for all units in the Project restricted by COUNTY, and (iii) designation of the units in the Project made accessible pursuant to the applicable accessibility requirements;

(25) HCD has received a cost certification for the Project from CONTRACTOR showing all uses and sources (receipt of the cost certification submitted to the California Tax Credit Allocation Committee may fulfill this requirement);

(26) HCD has received from CONTRACTOR a form of tenant lease and marketing plan for the Project;

(27) HCD has received from CONTRACTOR evidence of marketing for any vacant units in the Project such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of units, as applicable;

(28) HCD has received from CONTRACTOR all relevant contract activity information, including compliance with Section 3 and MBE/WBE requirements, if applicable;

(29) HCD has received from CONTRACTOR a final property management plan for the Project and contact information for the property manager of the Project and the name and phone number of the on-site property manager;

(30) In connection with state prevailing wages and/or prevailing wages under the Davis-Bacon Act (40 USC 3141-3148), HCD has received from CONTRACTOR all certified payrolls, and any identified payment issues have been resolved, or CONTRACTOR is working diligently to resolve any such issues;

(31) HCD has received from CONTRACTOR a certification regarding the accessibility of the Project to disabled persons;

(32) CONTRACTOR has paid the construction management fees (if any) required to be paid pursuant to the Loan Documents; and

(33) HCD has received from CONTRACTOR the Resident Services Plan and Resident Services Budget as defined in the Loan Documents.

b. Disbursement Conditions if Funds Disbursed Prior to Conversion. CONTRACTOR may provide a written request to HCD for the A1 Bond Loan to be disbursed during construction and prior to permanent conversion ("Conversion"). HCD may, in its sole discretion, agree to disburse the funds prior to Conversion. Any agreement by HCD for early disbursement of the A1 Bond proceeds will be contingent upon funding availability, HCD administrative and staffing capacity and availability, and CONTRACTOR's agreement to provide for any legal fees incurred in connection with any necessary amendment of the Loan Documents to accommodate such early disbursement of the A1 Bond Loan proceeds. In the event that the A1 Bond Loan proceeds are disbursed prior to the start of construction, subsections (11) – (15), (17) and (19) shall not be required to be fulfilled until the start of construction. In the event that the A1 Bond Loan proceeds are disbursed prior to Conversion, subsections (21) - (33) of Subsection (a) shall not be required to be fulfilled until Conversion. As applicable, HCD shall withhold a portion of the A1 Bond Loan until receipt of the items described in these subsections, and those Close-Out items described in Section 16(b) of Exhibit A to the extent not listed in this Section 3. If the A1 Bond Loan proceeds are disbursed prior to Conversion, CONTRACTOR may be required to make a special repayment of the A1 Bond Loan in the amount of Net Proceeds of Permanent Financing (defined below) at Conversion, as further set forth in the Loan Documents.

c. Additional Conditions to Disbursement at Conversion. In addition to the conditions set forth in Subsection (a) above, if the A1 Bond Loan is to be disbursed at Conversion, disbursement of such funds shall not occur until:

- (1) HCD has received and approved the calculation of the Net Proceeds of Permanent Financing. "Net Proceeds of Permanent Financing" means the amount by which the permanent financing for the Project exceeds the total of the cost of acquisition and construction of the Project. The amount of the A1 Bond Loan may be decreased by the amount of the Net Proceeds of Permanent Financing due HCD as further set forth in the Loan Documents;
- (2) All other permanent financing has been disbursed or is being disbursed to CONTRACTOR concurrently with the disbursement of the A1 Bond Loan; and
- (3) HCD has determined the amount of the A1 Bond Loan subject to disbursement, as such may be reduced by the amount of Net Proceeds of Permanent Financing due COUNTY.

4. REQUESTS FOR ADJUSTMENTS TO BUDGET LINE ITEMS

Once the line item budget has been approved, there can be no more than four (4) requests for adjustments to the budget during the contract period, including any final adjustments done at the end of the Project, unless otherwise approved by the Housing Director, which approval shall not be unreasonably withheld. Any change in the line item budget that results in lower costs shall be communicated to HCD immediately. If the Housing Director determines that the total amount of funds available under this Contract exceeds the amount necessary to complete the Project, the Housing Director may adjust the Contract accordingly. The budget amendment request should be on CONTRACTOR's letterhead, must contain an original signature of the CONTRACTOR's authorized signer, and must track the requested change by line item, showing original budget amount, balance expended to date, remaining funding by each line item, the amount to be moved between line items, and the final new budget amount. Budget amendments take between two and three weeks to process and must be processed prior to receipt of an invoice requesting funding under the new budget. The Housing Director reserves the right to deny any budget modification request.

5. PUBLIC RECOGNITION OF FUNDING

CONTRACTOR will publicly recognize the funding provided by the COUNTY in all newspaper articles and any other public relations opportunities related to this Project. CONTRACTOR will invite HCD staff and members of the Board of Supervisors to participate in the groundbreaking and grand opening ceremonies, if held.

6. COMPLIANCE WITH LOCAL POLICIES

CONTRACTOR may use a payroll service to handle payroll or handle payroll responsibilities internally. In either case, CONTRACTOR certifies that as required by local, State, and/or Federal law, all payroll and other required taxes will either be paid in full or accrued in the liabilities and accounted for with offsetting cash reserves to meet the obligation. CONTRACTOR shall include a certification to that effect in its annual audit report.

7. RETENTION OF FUNDS

HCD will retain Fifty Thousand Dollars (\$50,000) of the Project's developer fee until receipt of the Construction Close-Out documents listed in Exhibit A to this Contract and other documents listed in the Loan Documents. Upon receipt and approval of compliant Measure A1 Labor and Contract Compliance Closeout Report received by HCD within sixty (60) days of construction completion, 60% of these retained fees shall be released to CONTRACTOR. The remaining 40% of retained funds shall be released to CONTRACTOR upon receipt and approval of all remaining Construction Closeout Reporting documents within 12 months of construction completion, as described in Exhibit A, Section 18(B). If such documents are not received within the respective terms outlined above, HCD may deem part or all of the Retention Fund repaid to COUNTY.

Project Budget Exhibit

Uses	Measure A1 – Regional Allocation
Acquisition (Funds provided for Land Cost, Land Closing Cost, Predevelopment Loan Cost)	\$0
Hard Costs (Construction)	\$9,648,000
Soft Costs (Professional service fees)	\$0
County Developer Fee Retention	\$50,000
TOTAL	\$9,698,000

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Contract, CONTRACTOR, at its sole cost and expense, shall secure and keep in force during the entire term of the Contract or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$2,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses.	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
D	Course of Construction /Builder's Risk All Risk or Installation Floater when applicable	100% of property replacement value
E	Contractors Pollution Liability applicable to work being performed	\$1,000,000 per occurrence
F	Directors and Officers Liability Including Employment Practices Liability	\$1,000,000 per occurrence
G	Commercial Employee Dishonesty and Crime	Covering all officers and employees for loss of HCD loan proceeds caused by dishonesty
H	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers Compensation and Employers Liability, and Contractors Pollution Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. Builder's Risk/Installation floater shall name Alameda County as loss payee. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributing endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> - Separate insurance policies issued for each individual entity as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured." CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The require certificate(s) and endorsements must be sent as set forth in the Notices provision. 	

EXHIBIT D
MEASURE A1 LABOR AND CONTRACT COMPLIANCE PROGRAM
CERTIFICATION

1. Certification of CONTRACTOR Review of Terms of the Measure A1 Labor and Contract Compliance Program. CONTRACTOR has reviewed and understands the policies, procedures, terms and conditions of the Measure A1 Labor and Contract Compliance Program, with which this Project is required to comply as a condition of receiving Measure A1 Bond Loan funds from the Measure A1 Rental Housing Development Fund, in the following locations:

- a. CONTRACT, Sections 22 and 25
- b. Exhibit A: Contract Terms and Conditions: Sections 5, 11, 12, 17 and 18
- c. Exhibit B: Conditions to Disbursement and Payment: Section 3(a)(19) and Section 7
- d. Measure A1 Labor and Contract Compliance Policies and Procedures Manual

2. Acceptance of CONTRACTOR Responsibilities for Achieving Project Compliance: CONTRACTOR shall and shall cause the general contractor and all construction contractors at all tiers working on the Project to comply with the policies, procedures, terms and conditions required by the Measure A1 Labor and Contract Compliance Program, as outlined in this CONTRACT and its Exhibits.

3. Acceptance of Terms of Disbursement and Retention: CONTRACTOR understands that payment by HCD to the Project on requests for draws and reimbursements from Measure A1 Bond Loan funds, and release to the Project of 60% of the Retention Fund will be dependent on full compliance of the Project with these requirements, as evaluated by HCD prior to construction commencement, monthly during construction, and 60 days after construction completion.

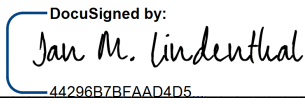
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SIGNATURES ON FOLLOWING PAGE

CONTRACTOR:

Brooklyn Basin Associates III, L.P.
a California limited partnership

By: MP Brooklyn Basin III, LLC
a California limited liability company,
its general partner

By: Mid-Peninsula Pickering Inc.
a California nonprofit public benefit corporation,
its sole manager/member

By: 
44296B7BF6AAD4D5
Jan M. Lindenthal
Assistant Secretary

DATE: 6/23/2020

EXHIBIT E
COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION
For Procurements Over \$25,000

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessary result in denial of award but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

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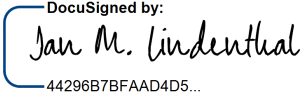
Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Contract. Signing this Contract on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR:

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By: 
44296B7BFAAD4D5...
Jan M. Lindenthal
Assistant Secretary

6/23/2020
DATE: _____

Exhibit F
FIRST SOURCE PROGRAM CERTIFICATION

a. For contracts over \$100,000, CONTRACTOR agrees to comply with the Alameda County First Source Program ("First Source") for all new or vacant positions of CONTRACTOR or its general partner if applicable, that are necessary to fulfill CONTRACTOR's obligations under this contract ("Positions"), including Positions that become available during the term of this Contract. A Contractor Information and Projection of Job Positions form to be completed by CONTRACTOR during the contract period is attached hereto as Exhibit F-1.

b. CONTRACTOR shall:

1. Submit Exhibit F-1, Projection of Job Positions, completed by CONTRACTOR prior to posting new positions.
2. Post new positions through the First Source System and search the First Source system for potential candidates to fill positions for a period of ten (10) calendar days prior to advertising the vacancy to the general public.
3. Contact their Alameda County Contract Manager with any questions and to provide the required documentation. The Contract Manager for this contract is:
Francisco Gomez Jr.: Francisco.gomez@acgov.org; (510) 670-6424.
4. If a position is hired through the First Source System, print out the result and attach it to the Quarterly Report.
5. The quarterly report for the term of the contract is due to the Contract Manager on the 15th of January, April, July, and September for the prior quarter.

The Quarterly Reports shall include the following:

- Completed form of Exhibit F-2, First Source Reporting Form
- Completed form of Exhibit F-3, Job Placement Employment Verification Form, if applicable
- Printouts from the First Source system showing hires

c. CONTRACTOR agrees to use its best efforts to hire candidates located through the First Source System, but the final decision of whether or not to offer employment, the terms and conditions of the employment, determination of the appropriateness of the qualifications and background of each of the candidate rest solely within the discretion of CONTRACTOR and are the sole responsibility of CONTRACTOR. CONTRACTOR is responsible for reporting out on all actions.

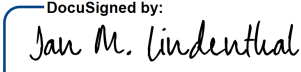
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By: 
44296B7BF AAD4D5...
Jan M. Lindenthal
Assistant Secretary

6/23/2020

DATE: _____

Exhibit F-1
CONTRACTOR'S PROJECTION OF JOB POSITIONS

In order to comply with First Source requirements, please complete this form by estimating the number of new or vacant positions that are necessary to fulfill the obligations under the contract ("Positions"). Complete the form with the number of Positions you anticipate you will be hiring candidates to fill.

Contractor Name: _____ Contact Person: _____
 Street Address: _____ Phone #: _____
 City: _____ State: _____ Email: _____
 Zip Code: _____ Fax #: _____

Position Title	Entry level? (Y/N)	Work location? (City)	Number of positions available?	Temp or perm?	Estimated Start Date	Attach job description? (Y/N)

Completed by: Jan M. Lindenthal
44296B7BFAAD4D5...

 (Contractor Authorized Signature)

Jan M. Lindenthal

 (Print Name)

6/23/2020

 (Date)

Exhibit F-2
FIRST SOURCE REPORTING FORM

Which quarter are you reporting for	
Number of positions filled during the quarter	
Number of positions posted in the First Source system	
Number of low-income Alameda County residents hired	
Number of low-income Alameda County residents hired through the First Source system (attach printout from First Source system)	
Number of non-Alameda County residents hired who are low-income	

Narrative

- 1. If there are any positions that were filled but were not posted in the First Source system for at least 10 days before advertising to the general public, please submit a response explaining why the positions were not posted.**

- 2. If any positions were hired outside of First Source, please explain why.**

- 3. Please describe any issues, barriers, or problems related to the implementation of the First Source program.**

- 4. For each position, please provide the following information:**
 - a. Employee's Full Name
 - b. Employee's Household Income prior to Hiring
 - c. Employee's Household Size
 - d. Employee New Job Title, hourly wage and whether benefits are provided
 - e. Start Date
 - f. Projected Termination Date (if applicable)
 - g. Whether employee is full time (36+ hours per week or part Time (less than 36 hours per week)

Exhibit G

COUNTY OF ALAMEDA
THE IRAN CONTRACTING ACT (ICA) OF 2010 CERTIFICATION
For Procurements of \$1,000,000 or more

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception:

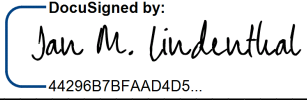
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