



**ALAMEDA COUNTY
MEASURE A1 RENTAL HOUSING PROGRAM
PROPOSED PROJECT LABOR AGREEMENT**

Health Committee – September 9, 2019

Measure A1 Private PLA

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- On November 7, 2017 your Board adopted the Measure A1 Implementation Policies for the Measure A1 Rental Housing Development Program.
- \$425 million in total funding allocation over the course of the Bond program.
 - \$200 million allocated to the Four Regional Pools
 - \$225 million allocated for Base City Allocations
- The Measure A1 Implementation Policies include a requirement that funded rental projects with 80+ units enter into a PLA that contains specific elements.
- NPH, EBHO, and the Building and Construction Trades Council agreed to draft a template, which HCD was to review re: compliance with the Policies.
- Measure A1-funded developers can choose to use that template or negotiate a different PLA that meets the Policy requirements.

Measure A1 Private PLA - 14 Required Components

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- ❑ No Strike/No Lockout
- ❑ Participation by Non-Union Contractors
- ❑ Rule of Three
- ❑ Non-Union contractors: Ability to use “core workers”
- ❑ Wage and Benefits Fund
- ❑ New Apprentices
- ❑ Process for compliance with Targeted Hire Requirements
- ❑ Compliance with Small/Local Business Entity (“S/LBE”) Contracting Requirements
- ❑ Assignment of Work
- ❑ Off-site Work
- ❑ Dispute Resolution
- ❑ Sole Proprietors
- ❑ Project Management
- ❑ Taxpayer Protection Provisions

Measure A1 Private PLA

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- ❑ Non-profit Housing Association of Northern California (NPH), East Bay Housing Organizations (EBHO), and the Building and Construction Trades Council of Alameda County (Trades) have submitted a Measure A1 private PLA for review by HCD.
- ❑ Housing and Community Development (HCD) and County Counsel have reviewed the submitted PLA for compliance with the adopted Measure A1 Rental Housing Development Implementation policies.
- ❑ Much of the proposed PLA and associated documents comply with adopted Measure A1 Implementation Policies.
 - ❑ Other proposed sections vary from adopted Policies.

Review of Proposed PLA and Key Issues

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- ❑ Components of Proposed PLA highlighted today fall into three groups:
- ❑ Key items that do not comply with the adopted Policies and present legal issues
- ❑ Key items that are not in compliance with current Policies or go beyond the scope of the current Policies
- ❑ Key Items that HCD recommends as additions or revision to adopted Policies

Key items that do not comply with adopted Policies and present legal issues

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❑ Board Policy Priority

- ❑ Section II, D of the MOU suggests language that the PLA supersede policies adopted by the Board of Supervisors.

❑ Optional Template and PLA Exception

- ❑ Attachment A to the MOU “Union Delegation of Authority” contains language that conflicts with adopted Measure A1 Implementation Policies.

❑ Mandated Hiring Targets

- ❑ The use of the word “requirement” was used throughout the PLA when referring to local hiring and contracting policies.
- ❑ Measure A1 Implementation Policies sets goals for local hiring and contracting.

Key items not in compliance with current Policies or that go beyond the scope of the current Policies

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❑ Contractor Support Center

- ❑ PLA appears to commit the County to funding a Contractor Support Center.
- ❑ Specifies quarterly meetings not including County to evaluate participation.
- ❑ Note: Funding a Center is not an eligible use of Measure A1 Bond funds.

❑ Carpenters Union PLA Exemption

- ❑ Addendum B to proposed PLA (side letter) exempts the Carpenter's Union from obligation to meet certain terms in PLA and the adopted Measure A1 Implementation Policies regarding competitiveness with subcontracting awards and compliance with S/LBE goals.

Key items not in compliance with current Policies or that go beyond the scope of the current Policies

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❑ Exclusion of Modular Housing Work

- ❑ Section 2.2.4 of PLA does not conform to the full language of the adopted Implementation Policies regarding components of modular housing work.

❑ Statutory Non-Discrimination Provision

- ❑ Article VIII of the PLA (Non-Discrimination) language:
 - ❑ Does not explicitly name all of the groups or activities listed in the adopted Implementation Policies in Section X.14 and is too narrow in scope.
 - ❑ Does not conform to the statute Public Contract Code section 2500(a) from which the Implementation Policies were derived from.

Key items not in compliance with current Policies or that go beyond the scope of the current Policies

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❑ Tenant Improvements

- ❑ Tenant Improvements included in Section 2.2.5 of PLA.
- ❑ Not addressed in adopted Policies.
- ❑ If added to A1 Policies - creates a conflict in what would be considered covered project work under A1 and can create work that could not be funded under current A1 guidelines.

❑ Residential Requirements for Apprentices

- ❑ Article XI of the PLA includes language regarding new definitions of Apprentices, specifically the use of an Alameda County residency requirement.
- ❑ Measure A1 Policies do not require Apprentices to be Alameda County residents.

❑ No Exemption for City Requirements

- ❑ Section 11.3 of the PLA does not recognize that the City of Oakland applies different labor and apprentice requirements on its projects and does not allow for different rules to be applied to those projects.
- ❑ A1 Policies allow for this differentiation.

Key items that HCD recommends as additions or revision to adopted Policies

❑ Duration of Pilot Period

- ❑ Adopted Implementation Policies expected NPH and Trades to negotiate a compliant PLA and present to HCD for review within 90 days of adoptions of the Policies on November 7, 2017.
- ❑ Policies specify a Pilot Period for the PLA of 15 months from the November 7, 2017.
- ❑ HCD would have had to initiate the PLA evaluation by early February 2019.
- ❑ The MOU submitted with the proposed PLA includes an extension of the Pilot Period through December 31, 2020.
- ❑ Due to the delay in the submission of the PLA template to the County, HCD also recommends that the Implementation Policies be revised to extend the Pilot Period through December 31, 2020.

Key items that HCD recommends as additions or revision to adopted Policies

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□ Definition of “Covered Project”

- Adopted Implementation Policies contain the following definition of “Covered Project”:

“All new construction of affordable housing projects funded by Measure A1 bond proceeds allocated to the Rental Housing Program that are 80 units or larger.”

Key items that HCD recommends as additions or revision to adopted Policies

- ❑ Proposed Form of County Resolution to the materials submitted for review has a more detailed definition of what would be considered a “Covered Project”:
 - ❑ *“Both affordable and market-rate units shall be included in the unit count, so long as such units are part of the same complex and are not separately-financed.”*
 - ❑ *“Separately financed projects that are constructed on a single podium shall not be considered a single project for the purposes of determining whether any project satisfies the 80-unit threshold. For example, if two separately-financed projects share a podium, and only one project receives A1 funding, then only the units in the A1-funded project shall be counted toward the 80-unit threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project).”*
 - ❑ *“Separately-financed projects that are part of a single master-plan entitlement process shall not be considered a single project for purposes of determining whether any project satisfies the 80-unit threshold. For example, if several separately-funded projects are all considered in a single entitlement process, but only one project receives A1 funding, then only units in the A1-funded project shall be counted toward the 80-unit threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project.”*

Key items that HCD recommends as additions or revision to adopted Policies

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- ❑ HCD recommends revising the Implementation Policies to include the more detailed definition of a project which would require a private PLA, a “Covered Project.”
 - ❑ Provides more robust and specific definition of a “Covered Project.”
 - ❑ Is consistent with the intent of the adopted Implementation Policies.

Next Steps

Next steps will be determined after discussion of the proposed PLA by your Committee and direction to staff.



QUESTIONS AND DISCUSSION

Health Committee of the Board – September 9, 2019



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

MEMORANDUM

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DATE: September 9, 2019

TO: Supervisor Wilma Chan
Supervisor Keith Carson
Board of Supervisors Health Committee

FROM: Chris Bazar, Director, Community Development Agency
Linda M. Gardner, Director, Housing and Community Development

SUBJECT: Review of Proposed Template Project Labor Agreement for Measure A1 Rental Housing Development Projects

BACKGROUND

On November 7, 2017 your Board adopted the Measure A1 Implementation Policies for the Measure A1 Rental Housing Development Programs. The total allocation to this fund is \$425 million over the course of the Bond program and includes both \$200 million for four Regional Pools and \$225 million for Base City Allocations per established formulas.

The adopted Implementation Policies also include a requirement for a private Project Labor Agreement (PLA) to be executed on rental housing developments with 80 or more units (Covered Projects), exempting the eleven first projects that were approved by the Board on an 'emergency' basis prior to the adoption of the Implementation Policies, due to the unexpected and rapid decrease in the value of Low Income Housing Tax Credits that followed the 2016 election.

As stated in the Measure A1 Implementation Policies (Section X, A.):

In order to promote labor peace, to secure the availability of an adequate skilled labor pool, and to ensure that these construction projects are completed on time and on schedule for the benefit of residents and County taxpayers, all new construction of affordable housing projects funded by Measure A1 bond proceeds allocated to the Rental Housing Program that are 80 units or larger (a 'Covered Project') shall have a Project Labor Agreement ("PLA") signed by the private developer ("Developer"), the Building and Construction Trades Council of Alameda County ("Trades"), and affiliated construction trade unions. The County will not be a party to these private PLAs.

The Implementation Policies outline 14 required components of the private PLA. They also anticipated that the Nonprofit Housing Association of Northern California (NPH)

and the Trades would negotiate a compliant PLA within 90 days after Board adoption of the policy, which they would submit to the County's Housing and Community Development Department (HCD) for verification of compliance. Developers with Covered Projects could then elect to sign on to the pre-approved template PLA or negotiate an alternative compliant PLA that includes at a minimum the terms required in the Policies.

NPH, along with East Bay Housing Organizations (EBHO) and the Trades have now submitted a Measure A1 private PLA for review by HCD. HCD and County Counsel have reviewed the PLA against the Measure A1 Rental Housing Development Fund Implementation Policies. The proposed PLA contains sections that are consistent with the adopted Policies and sections which are not consistent. HCD's review, assisted by County Counsel, is summarized below.

The adopted Implementation Policies are attached as Attachment 1. A Memorandum of Agreement between East Bay Housing Organizations, the Non-Profit Housing Association of Northern California, and the Building and Construction Trades Council of Alameda County (MOU) is attached as Attachment 2. The proposed Project Labor Agreement is attached as Attachment 3.

REVIEW OF PROPOSED PLA AND KEY ISSUES

Much of the proposed PLA and associated documents comply with the adopted Measure A1 Implementation Policies. Other sections vary from the adopted Policies. This report will first review key items that do not comply with the adopted Policies and which present legal issues. Following that, the report will outline additional key items which are not in compliance with current policy or which go beyond the scope of the current policy, for discussion by your Committee.

The MOU and proposed PLA contain several recommendations from the Trades and EBHO/NPH to the Board of Supervisors which HCD and County Counsel advise against. These include policies which were specifically crafted for legal reasons, including:

- A. **Board Policy Priority.** Section II, D of the MOU which states: "...The Parties hereby request that Alameda County *approve the A1 PLA as its template, which shall, in the event of any conflict, supersede the Policies adopted on November 7, 2017* [emphasis added]." A private agreement should not supersede policies adopted by the Board of Supervisors.
- B. **Optional Template and PLA Exceptions.** Attachment A to the MOU "Union Delegation of Authority" also contains language which conflicts with the adopted Measure A1 Implementation Policies. The first section of the Attachment A states: "... Following the approval of the Alameda County Board of Supervisors of a template Project Labor Agreement for Measure A1 funded projects (the "A1 PLA"), which *must be applied to all new construction of affordable housing projects funded by Measure A1 bond proceeds allocation the Rental Housing Program that are eighty (80) units or larger* [emphasis added]..." This language conflicts with the adopted Implementation Policies, which states in Section X. D. "Developers receiving Measure A1 Bond Rental

Housing Program affordable housing funds for Covered Projects may elect to use (sign on to) the pre-approved template PLA, or *negotiate an alternate compliant PLA* [emphasis added]... ” Section X.E. of the adopted Policies also states: “*To avoid potentially inconsistent obligations, the County will not require compliance with these Measure A1 PLA requirements if another funding source for the Covered Project has imposed a PLA requirement for the Covered Project or if a PLA is prohibited by State or Federal law, regulations or funding conditions.*”

- C. **Mandated Hiring Targets.** The use of the word “requirement” was used throughout the PLA when referring to local hiring and contracting policies. The Measure A1 Implementation Policies sections on local hiring and local contracting, specifically in Section VIII, B: Employment of Local Residents and Section IX, A: Local Contracting Goal and Section IX, B: Small Local Contracting Goal, contain *goals* in these areas. The PLA and related materials should replace the word ‘requirement’ when referring to these items with the word ‘goal’ to avoid creating requirements, instead of the goals included in the Policies.

In addition, Section H of the MOU, recommends that the Board of Supervisors adopt a resolution “...in the form attached hereto as Attachment C, and include the terms of such resolution into its Measure A1 Housing Bond Implementation Policies and Procedures, and any other County policies as appropriate, and into the funding agreements, grant agreements, terms sheets, or equivalent document(s) applicable to each covered Project.” It is HCD’s recommendation that, at your Board’s direction, County Counsel draft a revised resolution for the proposed PLA in order to ensure that the language in the resolution will not allow the agreement to supersede County policy, ensure that the Board’s authority regarding PLA negotiations and the use of pre-approved template PLA or an alternate compliant PLA, and to confirm the language in the resolution is compliant and consistent with current County policy.

The additional key items (described below) in the MOU and/or the proposed PLA either are not in compliance with the adopted Implementation Policies or have other issues. They are presented for discussion by your Committee and possibly the full Board of Supervisors, and direction to staff.

1. **Contractor Support Center.** The PLA appears to be committing the County to funding a Contractor Support Center and specifies quarterly meetings of a variety of entities which do not include a County representative to evaluate participation in Measure A1-funded projects by small, local, and/or emerging businesses. Article 1.4 of the PLA Definitions, contains the following: “*‘Contractor Support Center’ shall mean the entity designated by the County to provide supportive Services to S/LBEs, as described in Article XII.*” Article XII of the PLA (12.1) contemplates a County-funded contractor support center and defines services to be provided by it: “*A Contractor Support Center, funded by the County, will provide technical assistance, assessment, outreach, education and other contractor support services and resources that assist S/LBEs in complying with the terms of this Agreement ...*” Section 12.3 of the same Article XII states: “*The Contractor Support Center shall convene, and the Developer, the Council, and the Prime Contractor shall attend, a quarterly meeting to discuss*

implementation of the programs described above, and issues related to S/LBE participation on Measure A1-funded projects.”

Funding a center is not an eligible use of Measure A1 Bond funds. If approved and directed by your Board, additional procurement actions would be required to select and contract with a provider for these services.

- 2. Carpenters Union PLA Exemption.** Addendum B to the proposed PLA is a side letter which would exempt the Carpenter’s Union from the obligation to meet certain terms of the PLA and the adopted Measure A1 Implementation Policies regarding competitiveness with subcontracting awards and compliance with S/LBE goals.

The documents provided by the drafters of the PLA provide no explanation for this exemption.

- 3. Exclusion of Modular Housing Work.** Section 2.2.4 of the PLA states: *“Notwithstanding any other provision of this Agreement, off-site manufacture of modular housing is not Project Work.”* This section generally is in compliance with adopted Implementation Policies, however it does not conform to the full language of the Policies, which goes further than the PLA language (Section F, 10 Off-site Work): *“Off-site manufacture of modular housing or structural components will not [be] covered work under the PLA; ...”* (emphasis added). The PLA fails to include the phrase “or structural components” of modular housing in the exclusion from Project Work.
- 4. Statutory Non-Discrimination Provision.** Article VIII of the PLA (Non-Discrimination) language does not explicitly name all of the groups or activities listed in the adopted Implementation Policies in Section X.14 and is too narrow in scope. For example political affiliation or membership in a labor organization are not listed in the PLA and the PLA language is limited to *“...hiring and ... working conditions on the Project”*, although the PLA language does also include that contractors and unions will comply with *“...all non-discrimination provisions of federal, state, and local law...”* and extends the non-discrimination obligation to the dispatching of workers.

This section of the Implementation Policies is derived from Public Contract Code section 2500(a), which mandates the inclusion of the listed discrimination prohibitions in all PLAs. The proposed PLA does not conform to the statute or the Policies.

ADDITIONS TO COUNTY POLICY MADE BY PLA

The proposed PLA would also add additional policies that are not of part of the current adopted Measure A1 Implementation Policies. This section will outline key items that are not part of the adopted Implementation Policies. They are being presented for discussion by your Committee.

- 1. Tenant Improvements.** Article II of the PLA (Scope of Agreement), Section 2.2.5 includes the addition of Tenant Improvement definition that is not included in the current Measure A1 guidelines. *“Project Work includes tenant improvement work performed*

under the Prime Contract and begun within one year of filing the Notice of Completion, except for work performed by small businesses that are opening or relocating their first or second business and are owner by a resident of Alameda County... Tenant improvement work by residential tenants or residential unit purchasers who take title to one unit is not considered Project Work;... Tenant Improvement as it relates to what the PLA considers “Project Work” was not discussed or included during the development of the Measure A1 Implementation guidelines. The addition also creates conflict in what would be considered covered project work under current A1 guidelines and can create work that would not have the ability to be funded under current A1 guidelines.

2. **Residential Requirements for Apprentices.** Article XI of the PLA (Apprentices) includes language regarding new definitions of Apprentices that have not been established by the current Measure A1 guidelines. Specifically the use of a residency element for apprentices that states “*New Apprentice*” means an Alameda County resident who is newly enrolled (less than 3 months) as a registered apprentice in a state-certified joint labor-management apprenticeship program...” Measure A1 guidelines do not require that apprentices be local residents.
3. **No Exemption for City Requirements.** Article XI, Section 11.3 does not recognize that the City of Oakland applies different labor and apprentice requirements on its projects and thus does not allow for different rules to be applied to those projects despite the County policy allowing for this differentiation. There is some language in Section 7.4 of the PLA that allows Contractors to “comply with any other recruitment or hiring procedures required by any Funding Jurisdiction”, however it is unclear whether this allowance creates separate obligations rather than substituting one jurisdiction’s requirements for those of the County.

Recommended Revisions to County Policy

The following items in the proposed PLA would also add additional policies that are not of part of the current adopted Measure A1 Implementation Policies. Staff recommends that in regards to these items, the Measure A1 Implementation Policies be revised to match the proposals.

1. **Duration of Pilot Period.** The Implementation Policies anticipated that the parties negotiating the PLA template would be able to reach agreement and present the proposed PLA to the County within 90 days of adoption of the Policies on November 7, 2017. Based on that, the Implementation Policies specify a pilot period of 15 months from November 7, 2017, after which HCD, “*with support from NPH, EBHO, the Minority Contractors Association, Bay Area Community Benefits Organization, the Trades and any other appropriate stakeholders, shall initiate an evaluation of the impact of the PLA on the Covered Projects and the Rental Housing Program...*” (Section X.C.) This would have had HCD initiating the evaluation by early February 2019.

Given the delay in the parties submitting the proposed PLA template to the County, beyond the 90 days contemplated in the adopted Implementation Policies and the fact that no projects have currently executed a PLA, HCD recommends that the Pilot Period be

extended. The MOU from NPH, EBHO, and the Trades also includes an extension of the Pilot Period. Section III, B of the MOU states: "*Pilot Period. This A1 PLA shall be executed on, and be applicable to, all Covered Projects that are awarded Measure A1 funding by Alameda County from November 7, 2017 through December 31, 2020 (the "Pilot Period")...*" As stated above in Section B, to avoid conflicts with adopted Implementation policies, the language provided by NPH, EBHO and the Trades conflicts with the County's policy to allow for the use of the pre-approved template PLA or negotiate an alternate compliant PLA.

If the Board of Supervisors approves a template PLA in October 2019, the proposed December 31, 2020 end for the Pilot Period would be approximately 15 months after. The extension would allow seven current Measure A1 committed rental projects with 80+ units to work on reaching a PLA Agreement during this extension, while also allowing additional projects that may apply for Base City Funding or projects coming in through current RFPs to reach PLA agreements should those projects exceed 80 units.

2. Covered Project Definition. Attachment C to the materials submitted for review by NPH, EBHO and the Trades, the *Proposed Form of County Resolution* introduces a more detailed definition of what would be considered in determining if a specific project would be subject to the adopted Policy requirement for a private PLA, a "*Covered Project*". The proposed definition of the "*80-unit threshold*" definition includes:

1. "*Both affordable and market-rate units shall be included in the unit count, so long as such units are part of the same complex and are not separately-financed.*"
2. "*Separately financed projects that are constructed on a single podium shall not be considered a single project for the purposes of determining whether any project satisfies the 80-unit threshold. For example, if two separately-financed projects share a podium, and only one project receives A1 funding, then only the units in the A1-funded project shall be counted toward the 80-unit threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project).*"
3. "*Separately-financed projects that are part of a single master-plan entitlement process shall not be considered a single project for purposes of determining whether any project satisfies the 80-unit threshold. For example, if several separately-funded projects are all considered in a single entitlement process, but only one project receives A1 funding, then only units in the A1-funded project shall be counted toward the 80-unit threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project).*"

The current adopted Implementation Policies contain the following definition of "*Covered Project*": "*All new construction of affordable housing projects funded by Measure A1 bond proceeds allocated to the Rental Housing Program that are 80 units or larger.*"

The proposed more detailed language provides a more robust and specific definition of a "*Covered Project*" and is consistent with the intent of the adopted Implementation Policies.

NEXT STEPS

The next steps will be determined after discussion of the proposed PLA by your Committee and direction to staff.

Attachments:

- Attachment 1 – Adopted Measure A1 Rental Housing Development Program Implementation Policies
- Attachment 2 – NPH/EBHO/Trades Memorandum of Agreement
- Attachment 3 – NPH/EBHO/Trades Proposed Project Labor Agreement

cc: Each member, Board of Supervisors
Susan Muranishi, County Administrator
Melissa Wilk, Auditor Controller
Donna R. Ziegler, County Counsel
Andrea Weddle, Chief Assistant County Counsel
Melanie Atendido, County Administrator's Office
Pat O'Connell, County Administrator's Office

Health Committee

September 9, 2019

**Review of Proposed Template Project Labor Agreement for Measure
A1 Rental Housing Development Projects**

Attachment 1:

Adopted Measure A1 Implementation Policies:

- Measure A1 Implementation Policies Rental Housing Development Fund & Innovation and Opportunity Fund adopted on November 7, 2017



Measure A1 Implementation Policies

Rental Housing Development Fund & Innovation and Opportunity Fund

Adopted on November 7, 2017

On June 28, 2016, the Alameda County Board of Supervisors placed Measure A1 on the November ballot for \$580 million in general obligation bonds designated for affordable housing, and adopted a program summary outlining basic parameters of programs to be funded. The residents of Alameda County voted to support the Measure A1 Bond by 73% in favor on November 8, 2016. Alameda County's Housing and Community Development Department (HCD) is implementing the programs under the Bond.

Of the Bond's five programs, two are intended to increase the affordable rental housing inventory in Alameda County. Implementation-level policies have been developed within the framework of the program parameters approved by the Board in June 2016 to guide the use of the funds allocated to the Rental Housing Programs.

Adopted Program Summary Framework

When the Alameda County Board of Supervisors placed Measure A1 on the ballot, they adopted a program summary that framed each of the programs to be funded by the Bond.

- To create and preserve affordable rental housing for the County's most vulnerable current and displaced households, including low-income workforce households.
- The rental housing allocation includes funding for a Rental Housing Development Fund as well as for a Rental Housing Innovation and Opportunity Fund.
 - a. The Rental Housing Development Funds will be distributed throughout the county by formula in two different ways: Creation of four regional pools (North/Mid/South/East) and "Base City Allocations" for financing projects in each jurisdiction.
 - b. The Rental Housing Innovation and Opportunity Fund will be available countywide with no geographic distribution by formula.

The adopted Program Summary provides the overarching framework for these programs. These implementation policies, once adopted by the Board, will provide more detail for how the programs will operate while still providing flexibility to implement the programs. In addition, HCD will continue to use its existing Administrative Loan Terms (see Exhibit A) and detailed Housing Development Policies and Procedures, as applicable to Bond programs (see <http://www.acgov.org/cda/hcd/rhd/requirements.htm>) for specific project requirements. Measure A1 policies for the **Rental Housing Development Fund** and the **Innovation and Opportunity**

Fund that are different or more restrictive than the administrative policies and procedures listed above are outlined under Sections I and II below. Projects that received early commitments of Measure A1 Base City Allocation financing in Spring 2017 will not be subject to new or conflicting provisions in these policies. However, those projects will be subject to any Measure A1 Bond or other legal requirements as determined necessary by Bond Counsel.

It is anticipated that some of these initial Implementation Policies will evolve over time. HCD will track and report on implementation on an annual basis, including recommendations for modifications to policies to ensure achievement of Measure A1 goals or for legal compliance.

Note that for the purposes of these policies, unless explicitly stated otherwise, use of the term “city” shall include the Unincorporated County. For example, the Unincorporated County has an allocation as a city under the Base City Allocations of Rental Housing Development Program funding.

RENTAL HOUSING DEVELOPMENT FUND POLICIES

Measure A1 Specific Policies for Rental Housing Development Fund – Applies to Both Base City Allocations and Regional Pools

I. Income Levels

- A. The majority of the housing units are expected to serve very low-income households with incomes between 30% and 60% of Area Median Income (AMI).
- B. A portion of the funds may be allowed to subsidize units for households at or below 80% of AMI to create affordable housing for a mix of lower-income levels within developments.
- C. At least 20% of the units funded by this program will have an income cap at and serve extremely low-income households at or below 20% of AMI.
- D. The maximum amount of funding allowed to be spent on units at 80% of AMI is 5% of each funding Base City Allocation and each Regional Pool.
- E. Each city must restrict at least 20% of the units financed by its base city allocation to 20% of AMI and at least 20% of the units financed by each regional pool must be restricted at 20% AMI. HCD’s goal will be to meet this requirement with each funding allocation round of the Regional Pools.
- F. Any unit with a project-based voucher shall be counted towards meeting the 20% unit requirement, so long as the unit has a preference for households at 20% of AMI, even if the voucher specifies that it can serve households with incomes up to 50% of AMI.

Note: HCD will work to identify and coordinate with sources that can provide operating subsidies in coordination with capital funding provided by Measure A1. Measure A1 funds cannot pay for operating subsidies or services, capitalized operating reserves, services, or services reserves.

II. **Eligible Types of Projects:**

This component of the Bond program will assist in the creation and preservation of affordable rental housing for vulnerable populations; including:

- A. New construction
- B. Acquisition/rehabilitation
- C. Acquisition only
- D. Rehabilitation of existing affordable housing with extended affordability.
- E. Permanent Housing, with the exception of a portion of the Base City Allocation allowed to be spent on Emergency or Transitional Housing (see policies below specific to Base City Allocations).
- F. Projects must meet all Measure A1 Rental Housing Development Fund policies and requirements.
- G. **Project Size:** While it is anticipated that most projects will be multi-family projects of 5 or more units, scattered site single-family homes, accessory dwelling units (ADUs), properties zoned as commercial or industrial which will be legally converted to residential, small houses and shared housing may also be eligible, provided they are financially feasible, they meet all the Measure A1 Rental Housing Development Fund requirements, and they do not place an undue burden on the County to monitor for compliance.
- H. **Market Rate Housing:** Market rate housing is not eligible for Measure A1 funds.
 - 1. Measure A1 funds may not be used for development of units that are built to comply with local requirements such as density bonus, inclusionary zoning, or on site alternatives to payment of impact fees, unless the Measure A1 funding will result in units with a deeper level of affordability than otherwise required, with corresponding lower rents. These units will be part of a larger market rate development and physically integrated into that development.

2. Units that are built on land donated to satisfy local inclusionary requirements and are part of a stand-alone multi-family affordable project (such as a tax credit project or other project serving very low- and low-income households) would be eligible for Measure A1 funding as long as they meet all other requirements of the A1 program.

III. **Project Criteria:**

- A. **Affordability Term:** Projects must remain affordable for a minimum of 55 years.
- B. **Local Support & Contribution:** Proposed affordable developments must have the support of the city in which they are located, including a financial contribution. (See Match section below for more details.)
- C. **Target Population Priority:** Priorities for one or more of the following target populations, within the income limits described above:
 1. Homeless people, including individuals and families, chronically homeless people with disabilities and other homeless populations
 2. Seniors
 3. Veterans
 4. People with disabilities, including physical and developmental disabilities and mental illness
 5. Re-entry
 6. Transition-age youth aging out of foster care
 7. Lower-income workforce
- D. **Resident/Workforce Priority:** Alameda County residents and workforce will be given priority for these housing units.
- E. **Fair Housing:** The Board of Supervisors has adopted findings which support the need and public purposes of supporting the creation of affordable housing for the target populations and resident and workforce housing. To the extent possible and permissible under law, staff will implement restrictions and priorities for populations listed above using, where possible, regulatory agreements, marketing and rent up policies, and points in competitive funding selection processes for projects that include the target populations and resident and workforce goals.
 1. Alameda County HCD will track units dedicated to each of the target populations. Annually, the target populations of the projects funded and units produced will be reviewed and such review may impact priorities for future projects to ensure a spread of units serving these target populations.

2. Projects funded from the Base City Allocations must include units targeting one or more of the above target populations.
3. Applications for funding will require specificity regarding which target population(s) and income level(s) will be served.
4. Projects funded under Measure A1 must report on the number of tenant applicants denied/accepted for tenancy for households with a member with criminal convictions, along with the basis of denials. HCD may expand this policy at a later date as needed to serve target populations.
5. Sub-regional live/work goals: To prevent displacement and to encourage residential proximity to workplace, should a city wish to implement a sub-regional live/work preference policy for a portion of the units in a project, the city must meet certain criteria and be approved by the County. Criteria will include but not be limited to:
 - a) Completion of a study and making one or more findings which demonstrate city-level residential displacement is occurring and/or is at high risk of occurring and a need for a sub-regional live/work preference is needed to respond to or prevent displacement; and,
 - b) Enter into an agreement obligating the city to defend and indemnify the County against any claims or litigation that may arise from such a restriction.

F. Affirmative Fair Marketing Plans: HCD will require a Fair Marketing Plan for each project to ensure that the target populations, countywide and local resident and workforce populations will be aware of the housing opportunities to the greatest extent possible and that the leasing of the project units will be conducted in such a manner as to provide fair and equal access under the law.

1. Affirmative Fair Marketing/Rent-up Plans will be reviewed and evaluated by HCD.
2. All marketing efforts to include, at minimum, listing the unit openings with Eden I&R's 211 system, notifying parties on an HCD-established "Housing Opportunities" email list service, and broadly advertising to community- and faith-based organizations, service providers, all members of the Board of Supervisors, and others that register to receive such information.
3. The Marketing Plan must include notification to and active engagement with neighborhood-based organizations in the neighborhood in which the housing is or will be located.
4. All marketing and outreach materials must be provided in the core languages as specified in each city's Language Access Plan.

G. Selection Process:

1. Points in competitive project selection processes may be awarded to incentivize units for specific target populations, additional units for the target populations, and/or specific income levels, as well as for developers that have met or exceeded workforce goals in past projects and can demonstrate that achievement

2. Points in competitive selection processes will be awarded to incentivize partnerships with local and neighborhood nonprofit community and faith based organizations that contribute assets to the proposed development.
-
- H. **Tenant Screening:** To the greatest extent feasible, property owners and managers will use tenant screening tools that screen these vulnerable target populations into the projects rather than rejecting them for tenancy due to conditions associated with their target population status (such as homelessness, disability, re-entry, etc.). An example of a ‘screen in’ tenant screening tool is the Everyone Home tenant screening tool. Other examples or tools may be developed or authorized by the County. HCD will monitor and track the basis of rejections of applications for tenancy by target populations, such as homelessness and/or criminal justice involved households.
 - I. **Immigration Status:** All Measure A1 Bond-financed projects shall comply with California law prohibiting landlords from requiring any tenant to state, certify, or represent immigration status to a landlord, unless required by applicable Federal law.
 - J. **Application and Waitlist:** Should a unified core tenancy application or single wait list or point of entry be created for Bond-financed and/or other subsidized housing units in the county, all Bond-funded units will utilize and participate in that application, list or entry point.
 - K. **Coordinated Entry:** Referrals to all Permanent Supportive Housing will be made through the homeless Coordinated Entry System.
 - L. **Tenant Rights and Responsibilities:** All projects must provide to residents and post in a public location in each building funded with Bond proceeds a Tenant Rights and Responsibilities document (to be developed by HCD based on the HUD Tenants Rights and Responsibilities document).
 - M. **Anti-Displacement:** To prevent displacement while allowing Measure A1 funds to be used for acquisition of existing rental housing, for an Acquisition project to be eligible at least 85% of the existing tenant households must be income eligible under Measure A1 requirements. The existing “over income” households (households whose incomes exceed Measure A1 limits) will be allowed to remain and the units will be eligible for Measure A1 financing, as needed for project feasibility. Rent for the over income household will be set based on 30% of actual income or market rate, whichever is less. Upon unit turnover, the “over income” unit must be filled by a Measure A1 income-qualified household. Alternatively, Measure A1 funds may be used to finance less than 100% of the units in a building, excluding all or some of the units occupied by existing “over income” tenants. For example, in a 50 unit building in which 25 of the households have incomes at or below Measure A1 limits (50% of units), Measure A1 funds might only be used to subsidize the 25 units. Alternatively, Measure A1 funds could subsidize 35 units, with the requirement that upon turnover the 10 over-income units be rented to

tenants who meet specified Measure A1 income limits.

- N. **Relocation:** Should a project need to temporarily relocate residents (for example to allow units to be rehabilitated), the existing low-income residents shall have the first right of refusal to return to their previous or comparable unit at comparable or lower rents after the rehabilitation of the project is complete. Relocation benefits must be provided, utilizing State of California standards.
- O. **Administrative Loan Terms:** All projects must meet the Alameda County Housing and Community Development Department Administrative Loan Terms and underwriting requirements, as modified by these adopted Measure A1 Implementation Policies. In situations where additional public funding requirements are more restrictive than Alameda County's requirements, the more restrictive requirements shall prevail. See Exhibit A for summary details or the HCD website for the full document.

IV. Eligible Uses of the Funds

Uses of funds will be flexible, within the parameters of eligibility for use of general obligation bond proceeds, which include costs associated with land acquisition and capital improvements, as defined by the Internal Revenue Service (IRS).

- A. **Predevelopment period costs:** Subject to securing a deed of trust and regulatory agreement, acquisition of real property and standard soft costs are eligible.
- B. **Construction period costs:** New construction and rehabilitation to preserve affordability are eligible.
- C. **Permanent Financing:** Take-out of construction financing is eligible so long as the uses paid with construction financing meet the Measure A1 requirements.
- D. **Acquisition Costs:** Acquisition of land and buildings are an eligible use of bond proceeds, including tax defaulted properties, provided that a project is developed in a reasonable period of time. "Reasonable" is defined as having a financing plan in place within two years from acquisition and starting construction within three years from acquisition. An extension of one additional year for commencement of construction may be granted by the Housing Director, as long as the project is making significant progress towards construction start.
- E. **Rehabilitation Standards:** For Acquisition/Rehabilitation or Rehabilitation only projects, after completion of rehabilitation the project must meet applicable codes of the jurisdiction in which it is located, as evidenced by signoff approval by the local code official.
- F. **Relocation Costs:** Temporary Relocation costs are an allowable project cost, as part of the normal costs of development, and may upon approval of the County (and County's

Bond Counsel), be an eligible cost for Measure A1 funding.

- G. **Land Banking:** Long-term land banking will not be eligible for funding under the Rental Housing Development Fund program. Additional time may be granted to projects under section D above should a project not move ahead, and not be considered a “Land Banking” project.
- H. **Operating & Services Costs:** General obligation bond proceeds may not be used to fund services or operations costs, including capitalized operating or services reserves.

V. **Amount of Measure A1 Investment per Project**

The goals associated with the Measure A1 investment into affordable housing projects are to produce the largest number of units possible and to maximize leverage of other funding sources. In addition, the County will select feasible projects which will compete well for state and federal funding opportunities. The County intends to fund projects at a level that ensures viability for the life of the regulatory period.

- A. The Measure A1 Bond funds must fill a gap and not supplant other funding.
- B. Subject to the availability of funds in an applicable Base City Allocation or any Regional Pool, the maximum amount of Measure A1 funds per project shall be based on a percentage of the Total Project Costs (TPC). The number of units restricted by Measure A1 funds will be calculated using the State of California HCD maximum loan subsidy limit in place at the time of application, except as modified under items 3-5 below:
 - 1. For 9% Low Income Housing Tax Credit projects, a maximum of 30% of the TPC, and the State 9% subsidy limit per unit size (See Exhibit B) will be used to size the number of County restricted units, as determined by the Housing Director based on financial feasibility and as approved by the Board of Supervisors;
 - 2. For 4% Low Income Housing Tax Credit projects, a maximum of 40% of the TPC, and the State’s non 9% subsidy limit per unit size (See Exhibit B) will be used to size the number of County restricted units, as determined by the Housing Director based on financial feasibility and as approved by the Board of Supervisors;
 - 3. For small projects, defined as 20 units or less, or Special Needs projects (i.e. Extremely Low Income, Homeless, or Supportive Housing), up to an additional 10% increase in Bond fund subsidy may be allowed should the project demonstrate a financial need for additional funds to be feasible after other leveraged funds from other financing sources have been sought (i.e. from 30% of TPC to 40% of TPC in a 9% TCAC project or from 40% of TPC to 50% of TPC in a 4% TCAC project);
 - 4. If a project is subject to a Project Labor Agreement (PLA) (see Section X below), or a project voluntarily opts into a PLA, up to an additional 5% increase to the Measure A1 loan limits may be allowed to cover additional costs associated with the Project Labor Agreement, should the project demonstrate the need for the



additional funds to be feasible. This policy will be evaluated on the same timeframe as the evaluation of the Measure A1 Project Labor Agreement policies and may be subsequently modified by the Board of Supervisors

5. Minor changes to these maximum amounts, associated with a small funding gap in a previously approved project, may be approved at the discretion of the Board of Supervisors.

C. The maximum Measure A1 subsidy levels are a combined total of any Base City Allocation and any Regional Pool funds in a project.

D. The maximum Measure A1 subsidy levels will be reviewed at least annually to determine if modifications are needed for Measure A1 funded projects to compete successfully for Low Income Housing Tax Credits or other competitive State or Federal funding.

VI. Match Requirements

A. **Match:** All projects funded by Measure A1 Bond proceeds must include match from the city in which the project is located.

B. **Eligible Type:** Match must have a determinable financial value, including, but not limited to, any combination of such things as:

1. Cash, including HOME, CDBG and other federal or State funds that flow through the jurisdiction and are funding sources on which the jurisdiction relies;
2. The value of land which has been donated or the value of a reduction in cost of land from market value;
3. Waived planning, building or impact fees;
4. Cash or land donated by developer as a result of a negotiated deal with the city or due to a city policy;
5. The additional loan amount leveraged by a local housing authority's commitment of project based vouchers (including, but not limited to, Section 8, Veterans Administration Supportive Housing, and Local programs).

C. **Ineligible Type:** The following are not eligible sources of match:

1. City staff or consultant time;
2. Use of Base City Allocation.

D. **Commitment:**

1. The formal Match Commitment must occur in advance of construction loan closing, but the city will be allowed to administratively determine the amount of proposed match at the time of application in order for a project to qualify for Measure A1 funding.
2. A City Council-approved "future commitment" of match funds not yet available (e.g., inclusionary housing fees or ongoing revenue generated by the city) is allowable, so long as they are backed by its commitment that will replace this "future commitment" should the identified original funding source not become available.

- E. **Amount:** The minimum amount of match must equal the city planning and building fees, not including impact fees, for the city in which the project is located. Additional amounts are encouraged.
- F. **Base City vs. Regional Pools:** The minimum amount of required match is the same for projects funded by the Base City Allocations and projects funded by a Regional Pool.

VII. **Leverage Requirements**

- A. HCD seeks to leverage other sources of affordable housing financing including State, Federal and other local subsidy sources to the maximum extent possible.
- B. Additional points may be awarded in competitive project selection processes to incentivize leveraging of Measure A1 funds.

VIII. **Wage Levels and Employment Opportunities**

A. **Wage Rates:** If a project funded under Measure A1 is, independent of such funding, subject to federal or state prevailing wage laws, those federal or state mandates will control. If a project funded under Measure A1 is not otherwise subject to federal or state prevailing wage laws, it will be required to pay wage rates equivalent to California prevailing wage. The project will be required to report on these wages and HCD will monitor compliance.

B. **Employment of Local Residents:**

1. Local Hire Goal: 30% of all construction project hours worked under an affordable housing development project funded by Measure A1 shall be by Alameda County residents.
2. Targeted Disadvantaged Hire Goal: 5% of all construction project hours worked shall be by Targeted Disadvantaged Workers. Targeted Disadvantaged Workers are residents of Alameda County with incomes below 80% of Area Median Income, and who may also meet any of the following:
 - a. Are apprentices in any construction trade with two years or less participation;
 - b. Are current or past participants in Apprenticeship Readiness Programs serving Alameda County residents, including but not limited to Cypress Mandela Training Center and Rising Sun Energy Center;
 - c. Are current or past participants in Pre-Apprenticeship Programs serving Alameda County residents, including but not limited to Youth Employment Partnership, or construction training programs at the community college level;
 - d. Are recipients of public assistance;
 - e. Belong to any of the target populations in Alameda County identified in the Measure A1 program, including:
 - i. Re-entry individuals;
 - ii. Homeless or formerly homeless individuals living in homeless housing;



- iii. Veterans;
- iv. People with disabilities;
- v. Seniors; and
- vi. Transition-age foster youth.

C. **Career Pathway Programs:** Should the County establish or designate Job Training and Career Pathway programs for certification of local or disadvantaged workers, projects funded subsequent to establishment or designation of the program with Measure A1 Bond shall meet the requirements, as applicable.

D. **Outreach Requirements & Good Faith Efforts:** Projects are required to conduct outreach to make a good faith effort to meet all of the goals in this section. Evidence of this outreach will be submitted to HCD before subcontractors are offered subcontracts, or at the time of application for Measure A1 funding. HCD may require additional outreach if evidence submitted shows inadequate outreach to meet the local hire or disadvantaged worker requirements.

- 1. Evidence of outreach attempts through at least 3 venues to recruit local and targeted disadvantaged workers must be submitted for construction-related subcontracts.
- 2. Progress on all goals in Section VIII and documentation of good faith efforts towards these goals shall be reported quarterly to HCD prior to construction start, and shall be coordinated with weekly certified payroll reporting during construction. Final goal attainment will also be reported at the end of the project period.
- 3. A list of good faith efforts and acceptable forms of documentation of these efforts will be provided to bidders in bid documents by the developer.

E. **Preference Points:** A project may receive points in a competitive selection process if:

- 1. The applicant submits evidence of meeting local/targeted hiring goals in at least three previous affordable housing developments in the past ten years.
- 2. The applicant submits evidence of an existing partnership or plans to partner with a construction workforce training organization that will place local workers onto its A1 Bond-financed project.

F. **Pilot Period:** After a period of fifteen (15) months from the date of approval of these policies by the Board of Supervisors, Alameda County Housing and Community Development (“HCD”) staff will evaluate these policies and they will either be extended or amended and re-approved.

IX. **Contracting with local 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.
- C. **Minority-owned and Women-owned Business Enterprises (MBE/WBE):** Projects shall track and report on the hiring of Minority-Owned Businesses (MBE) and Woman-Owned Businesses (WBE).
- D. **Outreach Requirements & Good Faith Efforts:** Projects are required to conduct outreach to make a good faith effort to meet all of the goals in this section. Evidence of this outreach will be submitted to HCD before subcontractors are offered subcontracts, or at the time of application for Measure A1 funding. HCD may require additional outreach if evidence submitted shows inadequate outreach.
 - 1. Evidence of outreach attempts through at least 3 venues to recruit local and local and small businesses.
 - 2. Progress on all goals in Section IX and documentation of good faith efforts towards these goals shall be reported quarterly to HCD prior to construction start, and shall be coordinated with weekly certified payroll reporting during construction. Final goal attainment will also be reported at the end of the project period.
 - 3. A list of good faith efforts and acceptable forms of documentation of these efforts will be provided to bidders in bid documents by the developer.
- E. **Preference Points:** A project may receive extra points in a competitive selection process if:
 - 1. The applicant submits evidence of meeting local/small local contracting goals in at least three previous affordable housing developments in the past ten years.
- F. **Pilot Period:** After a period of fifteen (15) months from the date of approval of these policies by the Board of Supervisors, Alameda County Housing and Community Development (“HCD”) staff will evaluate these policies and they will either be extended or amended and re-approved.

X. **Private Project Labor Agreements**

With authorization from the voters, the County of Alameda is expanding its role as a participant in the market to develop affordable housing. The provision of affordable housing is an important means of protecting the health, safety and welfare of our citizens. The County also has a desire to advance the County’s proprietary interests in avoiding labor disputes on County funded projects. It is imperative that affordable housing projects funded by the County with Measure A1 Bond proceeds are completed promptly and efficiently.



- A. In order to promote labor peace, to secure the availability of an adequate skilled labor pool, and to ensure that these construction projects are completed on time and on schedule for the benefit of residents and County taxpayers, all new construction of affordable housing projects funded by Measure A1 bond proceeds allocated to the Rental Housing Program that are 80 units or larger (a “Covered Project”) shall have a Project Labor Agreement (“PLA”) signed by the private developer (“Developer”), the Building and Construction Trades Council of Alameda County (“Trades”), and affiliated construction trades unions. The County will not be a party to these private PLAs.
- B. The eleven (11) affordable housing projects previously approved by the Board of Supervisors to receive Measure A1 Bond Rental Housing Program permanent financing loans¹ are not Covered Projects and are not required to enter into a private PLA, but their developers are encouraged to do so.
- C. After a period of fifteen (15) months from the date of approval of these policies by the Board of Supervisors, Alameda County Housing and Community Development (“HCD”) staff, with support of representatives from the Non Profit Housing Association of Northern California (“NPH”), the East Bay Housing Organizations (“EBHO”), the Minority Contractors Association, Bay Area Community Benefits Organization, the Trades, and any other appropriate stakeholders, shall initiate an evaluation of the impact of the PLA on the Covered Projects and the Rental Housing Program to determine if the minimum threshold of 80 units can be feasibly adjusted, with the intent of lowering the unit threshold to include more Measure A1 Bond Rental Housing Program funded affordable housing projects under the PLA requirement, if feasible. HCD will present its recommendation to the Board of Supervisors for the final determination.
- D. The PLA, to be compliant with this policy, will include the terms set forth below. The NPH and Trades are expected to negotiate a compliant template PLA within 90 days after Board adoption of this policy and should submit the proposed template to HCD for verification of compliance. Developers receiving Measure A1 Bond Rental Housing Program affordable housing funds for Covered Projects may elect to use (sign on to) the pre-approved template PLA, or negotiate an alternate compliant PLA that includes the

¹ The eleven projects are: (1) Fruitvale BART Affordable Rental Housing Project (94 units) developed by EBALDC and Unity Council; (2) Kottinger Gardens II Affordable Rental Housing Project (54 units) developed by MidPen Housing; (3) Camino 23 Affordable Rental Housing Project (39 units) developed by Satellite Affordable Housing Associates (SAHA); (4) EMBARK Affordable Housing Project (70 units) developed by Resources for Community Development; (5) Grayson Street Affordable Rental Housing Project (23 units) developed by SAHA; (6) 3706 San Pablo Avenue Affordable Rental Housing Project (87 units) developed by EAH; (7) Everett and Eagle Affordable Rental Housing Project (19 units) developed by Housing Authority of the City of Alameda (HACA); (8) San Leandro Senior Apartments Affordable Rental Housing Project (85 units) developed by Bridge Housing Corporation; (9) Mission Court Senior Apartments Affordable Rental Housing Project (90 units) developed by Eden Housing; (10) Coliseum Connections Affordable Rental Housing Project (110 units) developed by UrbanCore Development Partners, LLC; and (11) Redwood Hill Townhomes Affordable Rental Housing Project (28 units) developed by SAHA.

terms below and any other terms to which the parties agree.

- E. To avoid potentially inconsistent obligations, the County will not require compliance with these Measure A1 PLA requirements if another funding source for the Covered Project has imposed a PLA requirement for the Covered Project or if a PLA is prohibited by State or Federal law, regulations or funding conditions.
- F. The required components of a compliant PLA for Measure A1 Covered Projects include:
1. **No Strike/No Lockout.** The PLA will contain guarantees against work stoppages, strikes, lock-outs, and similar disruptions on the Covered Project.
 2. **Participation by Non-Union Contractors.** All qualified contractors, both union and non-union, will be allowed to bid on and be awarded work on the Covered Projects without regard to whether they are otherwise parties to collective bargaining agreements.
 3. **Rule of Three.** If the general contractor receives bids from subcontractors that result in the Covered Project exceeding the 125% Tax Credit Allocation Committee (“TCAC”) 9% cost basis limit, then, for those subcontracts with fewer than three “Qualified Contractor” bidders the Trades will be granted a ten-day “re-bid” period to identify and encourage additional bidders on those subcontracts. If, after the re-bid period there are still fewer than three bidders for those subcontracts, then the general contractor may re-bid those subcontracts without PLA coverage (i.e., not Covered Work). The term “Qualified Contractor” means a licensed, financially qualified contractor with experience in the type of work required and that is capable of meeting the job schedule, has submitted a commercially reasonable bid, is bondable, carries appropriate insurance, including Workers’ Compensation insurance (or participates in a State recognized Workers’ Compensation Alternative Dispute Resolution (“ADR”) Program), and is otherwise capable of satisfying all requirements of the bid specifications. Developer and Trades can negotiate a different cost control approach in a specific case.
 4. **Non-union contractors: ability to use “core workers.”** Nonunion contractors must make first hires from the union hall; then can retain a “Core Worker” (registered with the hall); additional hires shall alternate 1:1 until a maximum of five (5) Core Workers have been hired; all future hires are from the hiring hall. A Core Worker is defined as an employee who was on active payroll for 60 out of the prior 140 days, and possesses all required credentials and licenses and the skill to safely perform the work.
 5. **Wages and Benefits funds.** All contractors working under the PLA will pay into benefits funds as set forth in applicable Master Agreements, and pay wages consistent with the applicable Master Agreement.
 6. **New Apprentices.** One new apprentice shall be hired for each \$5 million in Covered Project cost.

7. **Process for compliance with Targeted Hire Requirements.** When a public entity or jurisdiction providing funding for the Covered Project (“Funding Jurisdiction”) imposes a local/targeted hiring requirement as a condition of funding, contractors may comply with any other recruitment or hiring procedures required by any Funding Jurisdiction. Unions agree to refer local/targeted workers to contractors on a priority basis as needed for contractors to satisfy the requirement; and if the hiring halls do not have local/targeted workers available, they will allow contractors to obtain those workers from other non-union sources.
8. **Compliance with Small/Local Business Entity (“S/LBE”) Contracting Requirements.** If, after the Developer receives bids from subcontractors, there is not sufficient S/LBE participation to achieve S/LBE requirements imposed on the Covered Project by Funding Jurisdictions while not exceeding 125% of the TCAC 9% cost basis limit, and the Developer (or prime contractor) has identified an S/LBE contractor who would have bid under different PLA terms, then the parties obligation to meet and confer is triggered (with opportunity for discussion of terms for re-bid). At the end of a ten-day meet and confer period, one or more subcontracts may be re-bid competitively if necessary to meet the S/LBE participation requirement, either with agreed-to revised terms or without application of the PLA requirements to the subcontract in question.
9. **Assignment of work.** Jurisdictional assignments will be based on the Trades’ system.
10. **Off-site work.** Off-site manufacture of modular housing or structural components will not covered work under the PLA; off-site manufacture of sheet metal and plumbing components will be covered work within PLA if such work is covered by Sheet Metal or U.A. Master Agreements.
11. **Dispute Resolution.** A binding dispute resolution procedure shall apply for alleged violations of the PLA that allows for resolution of grievances through unanimous agreement of Developer and Trades or, if no unanimous agreement, through arbitration. PLA lists five arbitrators empowered to resolve grievances; parties strike names on an alternate basis. A separate binding dispute resolution procedure shall apply to jurisdictional disputes and to no-strike/no-lockout disputes.
12. **Sole Proprietors.** A Sole Proprietor self-performing work shall not be required to use a worker from the union hiring hall. However, if during the term of the PLA, the Sole Proprietor later hires employees, the Sole Proprietor will be treated as a Core Worker and any subsequent employee(s) will be dispatched from the hiring hall. Sole Proprietors in the trucking industry will be treated as Core Workers, but must nevertheless be dispatched from the hiring hall and will be exempt from trust fund obligations, but must pay representational fees. "Sole Proprietor" means a licensed contractor with no employees and exempted by the California Contractor's State License Board from the requirement to obtain and maintain workers' compensation insurance.
13. **Project Management.** Developer and prime contractor, through the bid documents, may establish a uniform work schedule across crafts of up to 8 hours

per day, with consistent start and stop times. Overtime for hours performed within that schedule shall be paid if required by applicable prevailing wage laws.

14. **Taxpayer Protection Provisions.** The PLA will contain all of the taxpayer protection provisions listed in Public Contract Code section 2500(a), including prohibiting discrimination based on race, national origin, religion, sexual orientation, political affiliation, or membership in a labor organization in hiring or dispatching workers for the Covered Project and an agreed-upon protocol concerning drug testing for workers who will be employed on the Covered Project.

XI. **Single Core Tenancy Application/Posting Unit Openings**

Goal: HCD desires to create a robust and easy to access method for low-income households seeking subsidized housing to locate and be informed of unit availability, as well as a universal core tenancy application system to streamline the application process for low-income households to apply for tenancy to these projects.

- A. Should HCD develop such a system, all projects funded by Measure A1 will be required to utilize the system.

XII. **Geographic Distribution of Funding**

- A. **Regional Pools** - \$200,000,000 will be divided into four regional pools which can be used to finance projects located in these regions, as follows:

HALF OF FUNDS TO REGIONAL POOLS		
Regional Pools Allocations by:	% of Total	Need-Blend of Poverty and RHNA LI & VLI
North County	44.7%	\$89,325,065
Mid County	24.9%	\$49,803,134
East County	13.7%	\$27,332,372
South County	16.8%	\$33,539,429
ALAMEDA COUNTY TOTAL	100.0%	\$200,000,000

North County Region: Albany, Berkeley, Emeryville, Oakland and Piedmont.

Mid County Region: Alameda, Hayward, San Leandro, and Unincorporated County.

South County Region: Fremont, Newark and Union City.

East County Region: Dublin, Livermore, and Pleasanton.

- B. Base City Allocation - \$225,000,000 will be divided by formula into base amounts for use in each city and the unincorporated county as follows:

HALF OF FUNDS TO BASE CITY ALLOCATIONS	
City Base Allocations by:	Total Population
City of Alameda	\$10,370,727
City of Albany	\$2,588,918
City of Berkeley	\$15,796,369
City of Dublin	\$8,831,465
City of Emeryville	\$2,799,109
City of Fremont	\$33,264,459
City of Hayward	\$20,298,294
City of Livermore	\$12,722,700
City of Newark	\$6,029,275
City of Oakland	\$54,803,565
City of Piedmont	\$2,431,300
City of Pleasanton	\$13,720,684
City of San Leandro	\$11,907,775
Unincorporated County	\$19,671,892
City of Union City	\$9,763,468
ALAMEDA COUNTY TOTAL	\$225,000,000

Measure A1 Specific Policies for Base City Allocations

(Note that for the purposes of these policies, unless explicitly stated otherwise, use of the term “city” shall include the Unincorporated County. For example, the Unincorporated County has an allocation as a city under the Base City Allocations of Rental Housing Development Program funding)

XIII. Procurement Process

- A. Cities will follow their own procurement processes to preliminarily select projects to be funded and to propose the amount of Base City Allocation to be awarded to each project, subject to the Measure A1 maximum subsidy limits.
- B. Cities must submit an application for each selected project to HCD. HCD will review the application for compliance with Measure A1 bond program requirements and HCD’s Rental Housing Development Policies and underwriting requirements.
- C. HCD will accept applications in an over-the-counter process, with specific deadlines established for proposed projects to be included in bond issuances as needed.

- D. Alternatively, a city may request that HCD administer the project selection process for all or a portion of the city's Base City Allocation, in which case HCD will run the city's selection process concurrently with the regional pool competitive RFP process, with the city approval of the Measure A1 eligible project(s) to be funded from its Base City Allocation.
- E. Initially, 10% of the Base City Allocations shall be reserved to cover the County's bond issuance and program delivery/administration costs. This percentage may be adjusted and any amounts not needed or projected to be needed for this purpose shall be released back into Base City Allocations.

XIV. **Types of Projects**

- A. In addition to the types of projects listed above, cities may use a portion of their Base City Allocations to finance the development of interim, crisis, or transitional housing for homeless households, provided the city has identified funding for operations and services.
- B. If a city uses a portion of its Base City Allocation for crisis, interim, or transitional housing, the city must identify funding sources for associated operations and services prior to HCD approval of use of Measure A1 funds.
- C. The "portion" of the Base City Allocation that may be used for crisis, interim, or transitional housing is defined as up to 10% for cities with Base City Allocations over \$15 million, up to 15% for cities with Base City Allocations under \$15 million and over \$10 million, and up to 20% for cities with Base City Allocations under \$10 million.
- D. A city may, at its discretion, use a portion of its Base City Allocation to finance a regional-serving project located in another jurisdiction.

XV. **Loan Administration**

- A. HCD will administer the Measure A1 funding, including negotiating deal terms and executing County loan documents.
- B. HCD will collect sufficient information to ensure that the projects meet Measure A1 policies and requirements.

XVI. **Commitment Deadline**

- A. Cities will have up to 4 years (until December 31, 2021) to commit funds to specific projects, with the possibility of a reasonable extension of this period should a feasible project be identified.
- B. "Commitment" is defined as a City Council action to allocate funds to a project.



- C. Funds not committed by the city within the deadline will be moved into the Regional Pool in which the city is located on January 1, 2022, unless an extension has been granted by the Housing Director, in which case the funds will be moved into the Regional Pool on the first day following the extension period.
- D. Once funds are committed, a project will have up to 3 years to start construction, and up to five years to expend funds.

Measure A1 Specific Policies for Regional Pools

XVII.

Procurement

- A. Developments financed with Bond funds must have the support and approval of the cities in which they are located, including financial support [as defined under the Match section of these policies].
- B. HCD will use a competitive Request for Proposals (RFP) process to select projects.
- C. It is a goal to use the Regional Pool funds to finance projects in various locations disbursed around each region, not only in one jurisdiction. In the competitive process, regional geographic spread will be considered.
- D. Initially, 10% of each Regional Pool shall be reserved to cover the County's bond issuance and program delivery/administration costs. This percentage may be adjusted and any amounts not needed or projected to be needed for this purpose shall be released back into the Regional Pools.

XVIII.

Commitment Deadline

- A. HCD will use its best efforts to commit all funds in each Regional Pool within 6 years (by December 31, 2023).
- B. Once funds are committed, a project will have up to 3 years to start construction, and up to five years to expend funds.
- C. Should a Regional Pool not have eligible, feasible projects requesting funding, after December 31, 2023, the funds in such a Regional Pool may be moved to one or more other Regional Pools which have eligible, feasible projects requesting funds that exceed the Pools' available balance.
- D. If uncommitted funds remain in any Regional Pool after January 1, 2024 those funds will be made available countywide through a competitive RFP process.

RENTAL HOUSING INNOVATION AND OPPORTUNITY FUND POLICIES

I. Use of Funds:

- A. The goal of this component of the Measure A1 Bond program is to support the ability of affordable housing developers to respond quickly to opportunities that arise in the market (i.e. properties that are for sale), to preserve and expand affordable rental housing and prevent displacement of current low-income Households.
- B. Eligible properties can include vacant land, existing apartment buildings and motels, tax defaulted properties, or other buildings to be converted into eligible housing. It is not intended to pay off mortgages of owned properties.
- C. All funds under this program shall be fully amortizing or fully repaid. This is not an equity program.
- D. HCD shall create the Acquisition and Opportunity Fund to provide loans for the acquisition of property for the development of long-term affordable rental housing:
 1. Eligible properties for acquisition can include commercial or industrial properties so long as the intent is to convert them to residential use and there is a reasonable expectation of the ability to do so;
 2. Acquisition of land or buildings, including tax defaulted properties, and related project soft costs are eligible uses of funds;
 3. Land trusts, which may result in rental or ownership affordable housing, are eligible projects under this category;
 4. Funds will be provided in the form of short-term loans, with an initial maximum loan term of three years;
 5. Repayments to this fund will be used to provide financing for additional projects over time; and
 6. HCD may administer this program internally or propose the use of a contracted Program Administrator to implement the program, with approval by the Board of Supervisors.
 7. Five percent (5%) of this fund shall be designated for development partnerships that include local nonprofit community-based or faith-based organizations and a Tier 1 developer.
- E. In addition to the Acquisition and Opportunity Fund described in D above, HCD will develop an Innovation Fund to support innovations in addressing the need for affordable rental housing for the household income levels and target populations of the Measure A1 Rental Housing Development Fund and will bring a program description and implementing policies to the Board of Supervisors for review and consideration.

- II. **Criteria:**
The housing developed under the Innovation and Opportunity Fund must meet the requirements of the Rental Housing Development Fund.
- III. **Geographic Distribution:**
The Acquisition and Opportunity Fund is available countywide for eligible projects.
- IV. **Procurement:**
 - A. HCD will issue a Request for Qualifications (RFQ) to establish a pool of pre-qualified Tier 1 Developers, or partnerships which include a Tier 1 Developer, which will then be able to apply over-the-counter for loans from the Innovation and Opportunity Fund.
 - B. Requirements for developers: To be considered for the Acquisition and Opportunity Fund, developers must meet HCD's Tier One Developer requirements.
 - C. Should the County select a Program Administrator to administer the Acquisition and Opportunity Fund, HCD will work with the Program Administrator to conduct the selection process for pre-qualified developers.
- V. **Leveraging**
Encourage developers to leverage funds to the greatest degree possible.
- VI. **Maximum or Minimum Loan Amounts:**
HCD will work with community-based lenders to establish minimum and maximum Measure A1 loan amounts, in order to combine Measure A1 funds in this program component with other, leveraged funds to the maximum extent possible.
- VII. **Loan Terms:**
 - A. These funds will be provided in the form of short-term loans. It is expected that the initial loan term will be a maximum of three years; however this term may be modified if necessary to leverage other financing. It is expected that the maximum term will not exceed five years.
 - B. The loans must be documented with a full set of loan documents, including a recorded deed of trust, regulatory agreement, signed promissory note and loan agreement.
 - C. Regular reporting on project progress will be required.
- VIII. **Match Requirements:**
 - A. Formal Commitment of city matching funds is not required at this stage of development as a prerequisite for award of Acquisition and Opportunity Fund loans.
 - B. City support and approval of the project is required at the time of the loan.

Exhibit A

Alameda County Housing and Community Development Department Administrative Loan Terms

Alameda County Housing and Community Development Department (HCD) maintains a set of Administrative Loan Terms and Housing Development Policies and Procedures used to implement its Affordable Housing Development Program. These policies are updated periodically, as changes occur in the affordable housing finance field, including programmatic changes at the State (CalHFA, California State Housing and Community Development, California Tax Credit Allocation Committee and California Debt Limit Allocation Committee) and Federal (Housing and Urban Development) levels.

The below is a very high level overview of HCD policies and do not represent all requirements of HCD funding. For additional details, see HCD's Affordable Housing Development Policies and Procedures, an annual Request for Proposals document, and HCD's Loan Documents, available on HCD's website. For the Measure A1 Bond program, also see specific Measure A1 policies and requirements, available on HCD's website.

A. Loan Documents:

It is anticipated that regardless of how funds are initially used, they will roll into permanent financing secured by long-term debt against the real estate secured by a Deed of Trust and Regulatory Agreement. In addition, borrowers must sign a Promissory Note and Loan Agreement documenting the County's investment. HCD's existing affordable housing development program policies as of the date of the contract will govern loan terms and HCD-imposed requirements.

1. Contract for funding, approved by the Board of Supervisors
2. Loan Agreement
3. Regulatory Agreement
4. Promissory Note
5. Deed of Trust
6. Subordination Agreement(s) (as applicable)

B. Term

In general, a 59-year loan term and regulatory period is required for affordable housing projects funded by HCD. This term has, on occasion, been reduced with the Housing Director's approval to 55 years in tax credit projects, when borrower's counsel justifies the reduction due to tax credit requirements. The term begins as of the date of initial occupancy, which can be set by either the Certificate of Occupancy or by the first occupancy of the building as reported in the closeout report.

C. Interest Rate

3% simple interest, owed as of the date of disbursement unless the Promissory Note indicates otherwise.



D. Payments

1. HCD loan may be amortized over a 59-year period, with equal payments throughout the term (amortized loan); or
2. In special needs projects that serve Extremely Low Income Households, payments may be deferred, at the Housing Director's discretion in order to make the project financially feasible; or
3. HCD loan may be repaid through a proportionate share of residual receipts. HCD may allow the General Partner of the borrower partnership to retain up to 50% of the residual receipts as an "Incentive Management Fee", but may restrict this to only 25% if there are soft lenders in addition to HCD sharing repayment from residual receipts. Should the Partnership Agreement not allow the GP to keep the full amount of the Incentive Management Fee, HCD will require that the amount of the soft lender share of residual receipts be increased to capture those funds.

E. Security

Deed of trust recorded against fee title or leasehold interest.

F. Regulatory Agreement

The HCD Regulatory Agreement must be recorded against the fee title interest on the property and in senior lien position to bank loan documents. In leasehold transactions, the Regulatory Agreement must be on the fee title. HCD's Regulatory Agreement includes a prohibition against discrimination based on the source of a tenant's income and requires acceptance of rental assistance programs like Shelter Plus Care and Section 8 Vouchers.

G. Income Restrictions

See the Measure A1 Specific Policies for Income Restrictions.

H. Rent Increases

Rent increases are subject to the requirements of the funding source(s) invested in the project. Rent may be increased by not more than 5% annually (unless approved in writing by the Housing Director in advance of the increase based on feasibility of the project). HCD will consider allowing rents to "Float Up" if a project based voucher contract is not renewed.

I. 4% MFMR Bond Projects

In any project funded by Alameda County Housing and Community Development, HCD will be the issuer of the Bonds, subject to the Housing Director, and approval by the Board of Supervisors.

J. Replacement Reserve

0.6% of the replacement cost of the structure annually, up to \$600 per unit for family developments and \$500 per unit for senior developments. These amounts may change annually as part of the RFP process to reflect updates or changes to State HCD program requirements.

K. Operating Reserve



Three months of operating expenses must be capitalized at conversion. Developers must make payments in schedule approved by the County until the reserve reaches 6 months of operating expenses. A larger deposit is encouraged.

L. Developer Fees

Developer fees will be set to be in conformance with the State Tax Credit program. At the time of this publication, for 9% Tax Credit projects, the maximum allowed by TCAC will generally be equal to \$2.2 Million. In 4% Tax Credit Projects, the maximum amount the Developer may take out of the Development Costs is equivalent to a 9% deal, however additional fee to increase basis is allowable if matched general partner capital contribution or taken out of the Borrower's share of cash flow over the tax credit compliance period. For non Tax Credit projects, the maximum developer fee is 10% of TPC, subject to the Housing Director's approval.

M. Retention

\$50,000 of HCD's loan funds must be allocated toward the developer fee and held as a performance retention, to be paid upon completion of construction and delivery of close out items. This amount can be adjusted for smaller projects, at the Housing Director's discretion.

N. Asset/Partnership Management Fees

Combined \$25,000 limit with no escalator; unpaid fees do not accrue; any fees above this amount or escalators must come from borrower's 50% Incentive Management Fee. State HCD is currently proposing new limits, but has not yet adopted them. The Housing Director may revise this policy to be in conformance with any new State policies on this issue.

O. Loan Fees

HCD may charge a loan closing fee.

P. Monitoring Fees

HCD will charge a monitoring fee for each HCD-restricted unit. The current fee is \$300 per restricted unit per year.

Q. Insurance Minimums

1. Workers Compensation: to the extent required by law, including Employer's Liability coverage, at least \$1,000,000 each accident
2. Commercial General Liability: \$2,000,000 per occurrence
3. Commercial Automobile Liability: \$1,000,000 per occurrence
4. Builder's Risk/Property: 100% of property replacement value
5. Commercial Crime: covering all officers and employees, for loss of HCD loan proceeds caused by dishonesty
6. Borrower must ensure that any general contractor or subcontractors maintain the insurance in #1-3 in the amount of \$1,000,000 each.
7. Commercial General Liability and Automobile Liability insurance policies must be endorsed to name as an additional insured HCD, and its officers, agents, employees and members of the County Board of Supervisors.



R. Records Retention

Records related to Alameda County bonds or loans used to fund construction or rehabilitation of low-income housing, including individual homeowner loans through large affordable housing developments, must be kept for the length of time the property is restricted plus 6 years.

S. Reports

1. Quarterly progress reports required during construction and with any invoice;
2. Quarterly reports required during the first year of operations, starting from certificate of occupancy;
3. Annual Reports required (within 180 days of the end of the fiscal year) after the first year and for the term of the loan.

T. Change Orders

For construction period loans, construction change orders are subject to HCD's approval.

U. Subcontracts

1. Contractor must submit proof that subcontractors are not debarred prior to construction loan closing.
2. HCD requires competitive bidding for all subcontractors.

V. Construction Contingency

1. **New Construction:** 10% required at initial application, but can drop down to 5% remaining after construction bids are known.
2. **Rehab:** 15% construction contingency required.

W. Jobs/Hiring

See the Measure A1 Specific Policies for Job/Hiring requirements.

X. Subordination

HCD will not accept standstill provisions or enter into a standstill agreement requested by senior lenders that prohibits HCD from exercising remedies during a specified period after a default

Y. Developer Criteria

HCD awards funds to Tier One developers. In order to be considered for funding under the Tier One criteria, a developer must demonstrate experience and capacity to complete the project. Experience includes the successful development and completion of three projects of a similar size and scope by the developer.

Capacity includes having staff on board and assigned to the project who have worked on similar projects and whose resume's demonstrate their ability to guide the project through all stages of the development process.

For developers that do not meet these requirements, a partnership with a Tier One developer is required.

Long term ownership entity must include a Tier One developer and its capacity to oversee the asset management of the building over the term of the regulatory agreement.

Z. HCD's Costs

Borrower (or Project) to pay for required 3rd party environmental review (NEPA/CEQA), HCD's legal costs associated with development and execution of project legal documents, wage monitoring associated with the project, and construction management costs associated with overseeing the progress of construction.

These administrative loan requirements are updated regularly in connection with the annual Request for Proposals process and in connection with changes at the State and Federal level to standard affordable housing finance policy, and subsequently approved by the Housing Director. HCD's objective is funding affordable housing that is financially viable over the long term loan and regulatory period as well as meets the County's fiduciary responsibilities in relationship to funding sources.

Exhibit B – Per Unit Subsidy Limit

Projects without 9% Tax Credits State HCD Loan Limits for Alameda County 2016**

Alameda County	Efficiency	1 BR	2 BR	3 BR	4+ BR
Income Limit					
80% AMI	\$110,000	\$110,000	\$110,000	\$110,000	\$110,000
60% AMI	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000
55% AMI	\$137,244	\$138,252	\$140,845	\$143,294	\$145,311
50% AMI	\$149,632	\$151,361	\$156,690	\$161,588	\$165,765
45% AMI	\$161,876	\$164,613	\$172,536	\$179,882	\$186,076
40% AMI	\$174,120	\$177,721	\$188,237	\$198,032	\$206,387
35% AMI	\$186,508	\$190,830	\$204,082	\$216,326	\$226,841
30% AMI	\$198,752	\$204,082	\$219,927	\$234,620	\$247,152
25% AMI	\$211,140	\$217,190	\$235,772	\$252,914	\$267,607
20% AMI	\$223,384	\$230,443	\$251,474	\$271,064	\$287,918
15% AMI	\$235,628	\$243,551	\$267,319	\$289,358	\$308,228

*80% AMI has been calculated by HCD

**Note: Maximum loan limits are adjusted annually.

Projects with 9% Tax Credits State HCD Loan Limits for Alameda County 2016**

Alameda County	Efficiency	1 BR	2 BR	3 BR	4+ BR
Income Limit					
80% AMI	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000
60% AMI	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000
55% AMI	\$57,244	\$58,252	\$60,845	\$63,294	\$65,311
50% AMI	\$69,632	\$71,361	\$76,690	\$81,588	\$85,765
45% AMI	\$81,876	\$84,613	\$92,536	\$99,882	\$106,076
40% AMI	\$94,120	\$97,721	\$108,237	\$118,032	\$126,387
35% AMI	\$106,508	\$110,830	\$124,082	\$136,326	\$146,841
30% AMI	\$118,752	\$124,082	\$139,927	\$154,620	\$167,152
25% AMI	\$131,140	\$137,190	\$155,772	\$172,914	\$187,607
20% AMI	\$143,384	\$150,443	\$171,474	\$191,064	\$207,918
15% AMI	\$155,628	\$163,551	\$187,319	\$209,358	\$228,228

*80% AMI has been calculated by HCD

**Note: Maximum loan limits are adjusted annually.



Health Committee

September 9, 2019

Review of Proposed Template Project Labor Agreement for Measure
A1 Rental Housing Development Projects

Attachment 2:

MEMORANDUM OF AGREEMENT regarding a
Project Labor Agreement for Measure A1-Funded
Affordable Housing Projects

- Memorandum of Agreement between East Bay Housing Organization, the Non-Profit Housing Association of Northern California, and the Building and Construction Trades Council of Alameda County (MOU)
- Attachment A – UNION DELEGATION OF AUTHORITY

MEMORANDUM OF AGREEMENT

regarding a Project Labor Agreement

for Measure A1-Funded Affordable Housing Projects

I. PREAMBLE.

This Memorandum of Agreement (“Agreement”) is between the following entities (the “Parties”): East Bay Housing Organizations (“EBHO”); Non-Profit Housing Association of Northern California (“NPH”); the Building and Construction Trades Council of Alameda County (the “Trades Council”); and the construction trades unions that are affiliates of the Trades Council and have executed this Agreement (through the Delegation of Authority attached as **Attachment A**). This Agreement is effective as of _____.

II. RECITALS.

A. The purpose of this Agreement is to provide the Alameda County Board of Supervisors with a template Project Labor Agreement (“PLA”) applicable to certain affordable housing projects funded by Alameda County’s Measure A1 Housing Bond, passed by voters in November 2016, recommend additional PLA policies to the Board of Supervisors, and set forth the Parties’ mutual commitments related to implementation of the PLA.

B. On November 7, 2017, the Alameda County Board of Supervisors adopted a resolution approving a set of Measure A1 Housing Bond Implementation Policies (“the Policies”).¹ The Policies required projects receiving Measure A1 bond proceeds that are 80 units or larger to have a PLA containing specified components. The Policies instructed the Parties to negotiate a template for the full text of such a PLA. The Policies also encouraged developers of projects under 80 units, or otherwise excluded from the PLA requirement, to voluntarily enter into a PLA with the Trades Council.

C. The Parties have negotiated the attached template PLA in satisfaction of the Board’s instructions (**Attachment B**, the “A1 PLA”). The A1 PLA is the outcome of extensive negotiations aimed at ensuring that Measure A1-funded affordable housing projects:

- are promptly and efficiently constructed, without labor strife or disruption;
- draw from a pool of skilled labor to improve project safety;

¹ The Policies were approved at the County Board of Supervisors meeting on November 7, 2017. (Resolution No. 2017-336, Agenda Items 14.1 and 14.2, as amended and approved).

- provide high-quality employment and training opportunities for Alameda County residents and disadvantaged workers;
- provide a range of business development opportunities to Small, Local Business Enterprises; and
- foster collaborative working relationships between local stakeholders, for the betterment of the Alameda County community.

D. This Agreement sets forth the Parties' mutual understandings, agreements, and commitments related to the application and implementation of the A1 PLA. The Parties hereby request that Alameda County approve the A1 PLA as its template, which shall, in the event of any conflict, supersede the Policies adopted on November 7, 2017.

E. This Agreement also proposes additional policies for adoption by the Alameda County Board of Supervisors (**Attachment C**, the "Proposed Form of County Resolution"). The Parties hereby request that Alameda County adopt the additional policies, which shall, in the event of any conflict, supersede the Policies adopted on November 7, 2017.

III. APPLICATION OF THE A1 PLA.

A. **Covered Projects.** The Parties agree the A1 PLA shall be required for certain A1-funded affordable housing development projects ("Covered Projects") as follows.

1. The A1 PLA shall apply to each and every Measure A1-funded affordable housing project with 80 or more units (the "80-Unit Threshold"), for which A1 funds are awarded during the Pilot Period (defined below).

2. In determining whether a project satisfies the 80-Unit Threshold, both affordable and market-rate units shall be included in the unit count, so long as such units are part of the same complex and are not separately-financed.

3. Separately-financed projects that are constructed on a single podium shall not be considered a single project for purposes of determining whether any project satisfies the 80-Unit Threshold. For example, if two separately-financed projects share a podium, and only one project receives A1 funding, then only the units in the A1-funded project shall be counted toward the 80-Unit Threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project).

4. Separately-financed projects that are part of a single master-plan entitlement process shall not be considered a single project for purposes of determining whether any project satisfies the 80-Unit Threshold. For example, if several separately-funded projects are all considered in a single entitlement process, but only one project receives A1 funding, then only units in the A1-funded project shall be counted toward the 80-Unit

Threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project).

B. Pilot Period. The A1 PLA shall be executed on, and be applicable to, all Covered Projects that are awarded Measure A1 funding by Alameda County from November 7, 2017 through December 31, 2020 (the "Pilot Period") (*i.e.*, not including projects awarded funding prior to that date as identified in the Policies). As set forth in the Policies, the County will initiate an evaluation of the impact of the PLA on the Covered Projects and the Rental Housing Program to determine if the minimum threshold of 80 units can be feasibly adjusted, with the intent of lowering the unit threshold to include more Measure A1 Bond Rental Housing Program funded affordable housing projects under the PLA requirement, if feasible. The Parties to this Agreement will cooperate with the County in that process. For the avoidance of doubt, given the pilot nature of this Agreement and the A1 PLA terms, neither Party shall be deemed to endorse such terms or the Policies as a precedent in other contexts, or after expiration of the Pilot Period.

IV. EXECUTION AND EFFECTIVENESS OF THE A1 PLA.

A. Definitions. Except as otherwise defined herein, all defined terms shall have the definitions contained in the A1 PLA.

B. Application to Covered Projects. On all Covered Projects, for each Prime Contract awarded by the Developer, the A1 PLA shall be executed for and applicable to the Prime Contract and all Construction Contracts thereunder. In the event there is more than one Prime Contract on a Covered Project, a separate A1 PLA shall be executed for each Prime Contract by each Prime Contractor, regardless of the size of the Prime Contract. The Developer must include a term requiring compliance with this Agreement in each Prime Contract.

C. Party Status of Unions. Each union, by executing the Delegation of Authority set forth as **Attachment A**, becomes a party to this Agreement, and by delegating its authority to the Trades Council becomes a party to each A1 PLA that is executed by the Trades Council.

V. PARTIES' AGREEMENT DURING PILOT PERIOD.

A. Good-faith Implementation. During the Pilot Period, the Parties shall attempt in good faith to implement the terms of this Agreement so as to advance the purposes stated herein.

B. Small, Local Business Utilization. The Parties shall work closely with local individuals and organizations who work with small, local, woman-owned and minority-owned businesses to build relationships and capacities, and implement policies and processes, that will assist contractors in business development and inclusion, on Covered Projects and elsewhere.

Toward this end, the Unions will work proactively with the Contractor Support Center to perform outreach and training to non-signatory small, local, woman-owned and minority-owned businesses to encourage and assist them in becoming signatory, and Developers and Contractors on Measure A1-funded projects will use their best efforts to utilize contractors receiving such training and assistance on those projects.

VI. MISCELLANEOUS.

A. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors in interest, and successors of such successors. The Parties intend by this Agreement that the A1 PLA shall apply to all Prime Contracts on all Covered Projects, in accordance with the terms herein.

B. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes any prior agreements, whether written or oral. This Agreement may not be altered, amended, or modified except by an instrument in writing signed by the Parties hereto.

C. Authority, Representations and Warranties. Each Party represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity for whom he or she is signing. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation, and will be enforceable by each Party and against each Party in accordance with the terms herein.

D. Severability. If any of the provisions of this Agreement shall prove to be invalid, void, illegal, or unenforceable, it shall in no way affect, impair, or invalidate any of the other provisions hereof.

E. Construction. Each of the Parties has had the opportunity to be advised by counsel with regard to this Agreement. Accordingly, this Agreement shall not be strictly construed against any Party, and any rule of construction that any ambiguities be resolved against the drafting Party shall not apply to this Agreement.

F. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

G. Execution and Implementation. The Parties shall execute and deliver documents and instruments and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.


H. Recommendations to the County. The Parties hereby recommend that the Alameda County Board of Supervisors adopt the resolution in the form attached hereto as **Attachment C**, and include the terms of such resolution into its Measure A1 Housing Bond Implementation Policies and Procedures, and any other County policies as appropriate, and into the funding agreements, grant agreements, term sheets, or equivalent document(s) applicable to each Covered Project.

THIS MEMORANDUM OF AGREEMENT has been executed by the Parties set forth below and in Attachment A, and is effective as of the date set forth in the preamble.

EAST BAY HOUSING ORGANIZATIONS,
a California nonprofit corporation

By: _____
Gloria Bruce
Executive Director
Date: _____

NON-PROFIT HOUSING ASSOCIATION OF NORTHERN CALIFORNIA,
a California nonprofit corporation

By:  _____
Amie Fishman
Executive Director
Date: 6/21/19

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY

By: _____
Andreas Cluver
Secretary-Treasurer
Date: _____

H. Recommendations to the County. The Parties hereby recommend that the Alameda County Board of Supervisors adopt the resolution in the form attached hereto as **Attachment C**, and include the terms of such resolution into its Measure A1 Housing Bond Implementation Policies and Procedures, and any other County policies as appropriate, and into the funding agreements, grant agreements, term sheets, or equivalent document(s) applicable to each Covered Project.

THIS MEMORANDUM OF AGREEMENT has been executed by the Parties set forth below and in Attachment A, and is effective as of the date set forth in the preamble.

EAST BAY HOUSING ORGANIZATIONS,
a California nonprofit corporation

By: *Gloria Bruce*

Gloria Bruce
Executive Director

Date: *June 20, 2019*

NON-PROFIT HOUSING ASSOCIATION OF NORTHERN CALIFORNIA,
a California nonprofit corporation

By: _____

Amie Fishman
Executive Director

Date: _____

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY

By: _____

Andreas Cluver
Secretary-Treasurer

Date: _____

H. **Recommendations to the County.** The Parties hereby recommend that the Alameda County Board of Supervisors adopt the resolution in the form attached hereto as Attachment C, and include the terms of such resolution into its Measure A1 Housing Bond Implementation Policies and Procedures, and any other County policies as appropriate, and into the funding agreements, grant agreements, term sheets, or equivalent document(s) applicable to each Covered Project.

THIS MEMORANDUM OF AGREEMENT has been executed by the Parties set forth below and in Attachment A, and is effective as of the date set forth in the preamble.


EAST BAY HOUSING ORGANIZATIONS,
a California nonprofit corporation

By: _____
Gloria Bruce
Executive Director
Date: _____

NON-PROFIT HOUSING ASSOCIATION OF NORTHERN CALIFORNIA,
a California nonprofit corporation

By: _____
Amie Fishman
Executive Director
Date: _____

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY

By:  _____
Andreas Cluver
Secretary-Treasurer
Date: 6/24/19

ATTACHMENT A:

UNION DELEGATION OF AUTHORITY

**PROJECT LABOR AGREEMENT FOR MEASURE A1 PROJECTS
UNION DELEGATION OF SIGNATORY AUTHORITY**

Following the approval of the Alameda County Board of Supervisors of a template Project Labor Agreement for Measure A1 funded projects (the "A1 PLA"), which must be applied to all new construction of affordable housing projects funded by Measure A1 bond proceeds allocated to the Rental Housing Program that are eighty (80) units or larger; and the Building and Construction Trades Council of Alameda County (the "Council") and its affiliated unions having negotiated a template PLA (the "A1 PLA") for such projects with representatives of affordable housing developers and local contractors; the undersigned Unions affiliated with the Building and Construction Trades Council of Alameda County (the "Council") hereby agree as follows.

1. The undersigned Unions have reviewed the A1 PLA, a copy of which has been received and acknowledged.
2. The undersigned Unions agree to the terms of the A1 PLA, and delegate their authority to the Secretary-Treasurer of the Council to execute a project labor agreement(s) for a Measure A1-funded project that is identical in language and terms to the A1 PLA, to be applied to that particular project.
3. In order for this delegation of authority to be effective, the project labor agreement(s) for the Measure A1- funded project may not deviate in language or terms from the A1 PLA.
4. The undersigned Unions agree to the terms of the Memorandum of Agreement to which this delegation of authority is attached.

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY

By: _____
Andreas Cluver, Secretary-Treasurer

Date: _____

[UNION SIGNATURES ON PAGE TO FOLLOW]

UNION SIGNATURES

<p>BOILERMAKERS LOCAL #549</p> <hr/>	<p>BRICKLAYERS & ALLIED CRAFTWORKERS LOCAL #3</p> <hr/>
<p>DISTRICT COUNCIL 16, INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, ON BEHALF OF ITSELF AND ITS AFFILIATED LOCAL UNIONS</p> <hr/>	<p>ELECTRICAL WORKERS LOCAL #595</p> <hr/>
<p>ELEVATOR CONSTRUCTORS LOCAL #8</p> <hr/>	<p>INSULATORS LOCAL #16</p> <hr/>
<p>IRON WORKERS LOCAL #378</p> <hr/>	<p>NORTHERN CALIFORNIA CARPENTERS REGIONAL COUNCIL, ON BEHALF OF ITSELF AND ITS AFFILIATED LOCAL UNIONS</p> <hr/>
<p>NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS, ON BEHALF OF ITSELF AND ITS AFFILIATED LOCAL UNIONS</p> <hr/>	<p>OPERATING ENGINEERS LOCAL #3</p> <hr/>

<p>PLASTERERS LOCAL #66</p> <hr/>	<p>PLASTERERS AND CEMENT MASONS LOCAL #300</p> <hr/>
<p>ROOFERS & WATERPROOFERS LOCAL #81</p> <hr/>	<p>SHEET METAL WORKERS LOCAL #104</p> <hr/>
<p>SIGN & DISPLAY LOCAL #510</p> <hr/>	<p>SPRINKLERFITTERS LOCAL #483</p> <hr/>
<p>TEAMSTERS LOCAL #853</p> <hr/>	<p>UA STEAMFITTERS, PIPEFITTERS, PLUMBERS & GAS FITTERS LOCAL #342</p> <hr/>
<p>UA UNDERGROUND UTILITY & LANDSCAPE IRRIGATION LOCAL #355</p> <hr/>	

Health Committee

September 9, 2019

Review of Proposed Template Project Labor Agreement for Measure
A1 Rental Housing Development Projects

Attachment 3:

Proposed A1 Project Labor Agreement:

- Attachment B – A1 PROJECT LABOR AGREEMENT (INCLUDING SIDE LETTER)
- Addendum A – [PROJECT NAME] PROJECT LABOR AGREEMENT – AGREEMENT TO BE BOUND
- Addendum B - Side Letter – Carpenter's Union
- Attachment C - PROPOSED FORM OF COUNTY RESOLUTION

ATTACHMENT B:

**A1 PROJECT LABOR AGREEMENT (INCLUDING
SIDE LETTER)**

**PROJECT LABOR AGREEMENT
FOR [PROJECT NAME]**

PREAMBLE

This Agreement is entered into this ____ day of _____, 20__, by and between [NAME OF DEVELOPER], [NAME OF PRIME CONTRACTOR], the Building and Construction Trades Council of Alameda County, and labor organizations signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto. It is applicable to construction of the [PROJECT NAME] development, a housing construction project located at [ADDRESS] in Alameda County, performed under the Prime Contract. This Agreement is attached to and incorporated into the Prime Contract as a material term.

This Agreement is binding upon the Developer, Prime Contractor, and Unions, and upon contractors and subcontractors of any tier engaged in Project Work as defined herein.

PURPOSE

The purpose of this Agreement is to promote efficiency of construction operations during the Project and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby assuring the timely and economical completion of the Project.

The Parties recognize the need for the timely completion of the Project as defined herein without interruption or delay. This Agreement is intended to promote efficient construction operations in a safe work environment, to ensure an adequate supply of skilled craftworkers, and to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability.

The Parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project, potentially leading to labor disputes that could delay completion of the Project.

The Parties desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement.

This Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the contractors and the Unions, except to the extent that the provisions of this Agreement are inconsistent with such collective bargaining agreements, in which case the provisions of this Agreement shall prevail.

This Agreement is intended to allow and facilitate and enhance compliance of the Project, Developers, and Contractors with S/LBE Requirements and Targeted Employment Requirements on the Project, and with all other requirements imposed on the Project by sources of funding for the Project.

In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the parties signatory to this Agreement pledge to work and cooperate with each other and pledge their full good faith and trust to work toward the mutually satisfactory completion of the Project.

ARTICLE I DEFINITIONS

Terms set forth below shall have the following meanings when capitalized. Defined terms include both singular and plural form.

- 1.1 “Agreement” means this Project Labor Agreement.
- 1.2 “Construction Contract” means any contract or subcontract for performance of Project Work.
- 1.3 “Contractor” means any entity performing Project Work, including an individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise, including the Developer, Prime Contractor, and all contractors and subcontractors of any tier, and their successors and assigns, that performs Project Work.
- 1.4 “Contractor Support Center” shall mean the entity designated by the County to provide supportive services to S/LBEs, as described in Article XII.
- 1.5 “Council” means the Building and Construction Trades Council of Alameda County.
- 1.6 “Developer” means [NAME OF DEVELOPER].
- 1.7 “Master Agreement” means the master collective bargaining agreement(s) of a Union.
- 1.8 “Parties” means the Developer, the Prime Contractor, the Council, and the Unions.
- 1.9 “Prevailing Wage Determinations” shall mean the then-current General Prevailing Wage Determinations for journeymen and apprentices issued by the California Department of Industrial Relations.

1.10 “Prime Contract” is the contract related to Project construction between the Developer and Prime Contractor to which this Agreement is attached and into which this Agreement is incorporated as a material term.

1.11 “Prime Contractor” means [NAME OF PRIME CONTRACTOR].

1.12 “Project” means the [PROJECT NAME] development, a housing construction project located at [ADDRESS], in Alameda County.

1.13 “Project Work” means construction work that both (i) is pursuant to the Prime Contract or any subcontract thereunder, of any tier, and (ii) is as described in Section 2, below; and that is not exempted from compliance with this Agreement pursuant to sections 4.4 or 4.5. Any reference to “performing” or “performance of” Project Work, or any variation thereof, also includes assigning, awarding, or subcontracting of Project Work.

1.14 “S/LBE” means a certified small and/or local business enterprise, or other type of business entity certified for purpose of satisfaction of S/LBE Requirements.

1.15 “S/LBE Requirements” means requirements imposed on the Project by a public funding source requiring efforts to include specified types of businesses in contract and/or subcontract awards for Project construction.

1.16 “Targeted Employment Requirements” means requirements imposed on the Project by a public funding source requiring efforts to employ specified categories of workers in performance of Project Work.

1.17 “Union” means the Council and its local unions signatory to this agreement, acting on their own behalf, and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who executed this Agreement.

ARTICLE II SCOPE OF AGREEMENT

2.1 This Agreement applies to all Parties and each Contractor in performance of Project Work. This Agreement includes the Side Letter attached as **Addendum B**, which is incorporated herein.

2.2 This Agreement applies to performance of all Project Work, except as otherwise indicated herein. Project Work includes the following work, described below, and to be performed by a Union. Once the Prime Contract is completed, it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work, modifications, punch list work, start-up, calibration, commissioning, performance testing, and operational revisions to systems and/or subsystems required by its Construction Contract or the Prime Contract or when a Contractor performs work under change orders to its Construction Contract or the Prime Contract.

2.2.1 Project Work includes, without limitation, all on-site site preparation, surveying, remediation, construction, alteration, retrofit, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project, that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement shall apply to work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This Agreement covers all soils and material inspection and testing to be performed to complete the Project, and all construction, demolition, or other works or improvements required to be performed as a condition of approval by any public agency. This Agreement also covers all inspection, testing and maintenance of life safety fire protection systems where such work is covered by the prevailing wage determinations of the California Department of Industrial Relations.

2.2.2 Project Work includes all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process, as well as the off-hauling of soil, sand, gravel, rocks, concrete, debris, excess fill, material, mud, dirt, ground asphalt, excavation materials, or concrete rubble, to the fullest extent provided by law and the prevailing wage determinations of the California Department of Industrial Relations.

2.2.3 Project Work includes all on-site fabrication work over which Developer, Contractors or subcontractors of any tier possess the right of control (including work done for the Project in any temporary yard or area established for the Project), provided such work is within the fabrication provisions of a Master Agreement or national agreement of one of the Unions. Project Work also includes off-site fabrication traditionally performed by the Unions and that as of [DATE OF EXECUTION OF TEMPLATE PLA] is within the fabrication provisions of the Master Agreement, or a local addendum to a national agreement, of the Sheet Metal Workers, United Association (Plumbers and Pipefitters), and International Brotherhood of Electrical Workers. This provision applies for the term of this Agreement.

2.2.4 Notwithstanding any other provision of this Agreement, off-site manufacture of modular housing is not Project Work.

2.2.5 Tenant Improvement. Project Work includes tenant improvement work performed under the Prime Contract and begun within one year of filing of the Notice of Completion, except for work performed by small businesses that are opening or relocating their first or second business and are owned by a resident of Alameda County, excluding franchises and/or chains, and except for work performed by nonprofit entities that primarily operate in Alameda County. Tenant improvement work by residential tenants or residential unit purchasers who take title to one unit is not considered Project Work; however, tenant improvement work by tenants or unit purchasers who take title to more than one unit for residential or commercial purposes or to use as investments is considered Project Work.

2.3 National Agreements: Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles XVI (Grievance and Arbitration), XVII (No Strike/No Lockout Provisions), XVIII (Expedited Arbitration Procedure for Strikes and Lockouts) and XIX (Work Assignments and Jurisdictional Disputes) of this Agreement shall apply to such work.

2.4 Invitations to Bid: This Agreement shall be included in all invitations to bid or solicitations for proposals from Contractors for performance of Project Work.

2.5 Exclusions: The following work is excluded from this Agreement:

2.5.1 This Agreement shall not apply to work of a Contractor's non-craft executives, managerial employees, supervisors above the level of General Foreman (except those covered by existing Master Agreements), and clerical, administrative, and management personnel. The parties agree that trust fund contributions may be paid to the Union fringe benefit trust funds on behalf of superintendents employed by Contractors who so desire in accordance with a Master Agreement.

2.5.2 This Agreement shall not apply to any non-Project Work that is not under the control of the Developer or the Prime Contractor, such as work that is undertaken by state, county, city or other governmental bodies, or their contractors, or by public utilities. Work performed by public or private utilities including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be considered Project Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line that provides for access to the building via a conduit or series of conduits shall be considered Project Work.

2.5.3 This Agreement shall not apply to non-construction support services indirectly related to the work contracted by the Developer or Prime Contractor in connection with the Project.

2.5.4 This Agreement does not apply to off-site maintenance of leased equipment and on-site supervision of such work.

ARTICLE III
EFFECT OF AGREEMENT

3.1 Contractor Agreement. By accepting the award of a Construction Contract for the Project Work, whether as a Contractor or subcontractor thereunder, each Contractor agrees to be bound by each and every provision of this Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **Agreement to be Bound** in the form attached hereto as **Addendum A**.

3.2 Application of Master Agreements. The Master Agreements, which are incorporated herein by reference, shall apply to performance of Project Work, notwithstanding the provisions of any other local, regional and/or national Union agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement is inconsistent with a Master Agreement, the provisions of this Agreement shall prevail. Where a provision of a Master Agreement is not inconsistent with this Agreement, the provision of the Master Agreement shall apply to performance of Project Work. Upon request of Developer or any Contractor, the Unions will provide a current copy of their Master Agreement.

3.3 Binding on Parties. This Agreement shall only be binding on the Parties and the Contractors, and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

3.4 Several Liability. The liability of any Contractor and the liability of the separate Unions under this Agreement shall be several and not joint, to the extent consistent with law and the Master Agreements.

ARTICLE IV
SUBCONTRACTING

4.1 Agreement to be Bound. At the time that any Contractor enters into a subcontract with any subcontractor of any tier providing for the performance of a Construction Contract, the Contractor shall provide a copy of this Agreement, as it may from time to time be modified, to said subcontractor and shall require the subcontractor as a condition of accepting an award of a Construction Contract to agree in writing to be bound by this Agreement prior to the commencement of work by executing the “**Agreement To Be Bound**” attached hereto as “**Addendum A**.” A copy of the executed Agreement to be Bound shall be submitted to the Council and the Union(s) prior to both the commencement of work and the Pre-Construction Conference. If a Contractor refuses to execute the Agreement to be Bound, then such Contractor shall not be permitted to perform Project Work.

4.2 Primary Obligation. Where a Master Agreement or applicable law places obligation or liability on a Contractor for the actions or omissions of its subcontractors, such obligation or liability shall remain with the Contractor regardless of any terms of this Agreement.

4.3 Contractor Eligibility. All qualified contractors and subcontractors may bid for and be awarded work on the Project without regard to whether they are otherwise parties to collective bargaining agreements.

4.4 Competitiveness in Subcontract Awards. If in initial efforts to award subcontracts the Prime Contractor receives a set of bids that in aggregate exceed the Project's pre-bid estimated amounts so as to result in overall Project costs exceeding the 125% Tax Credit Allocation Committee ("TCAC") 9% cost basis limit applicable to the Project, then the Prime Contractor may initiate the following process, with Developer's approval:

i. Initial Re-Bid Process. Subcontracts for which fewer than three bids from Qualified Contractors are received may be re-bid. In such case, the Prime Contractor shall provide notice to the Council that it is going to re-bid such subcontracts, with a due date no less than ten days from notification and availability of bid documents to the Council. The Council and Unions may encourage additional contractors to submit bids. The Prime Contractor shall provide bid specifications and any other information required for bid submission to the Council promptly upon request.

ii. Secondary Re-Bid Process. If after the Initial Re-Bid Process there are still fewer than three Qualified Contractors submitting bids for one or more of the subcontracts in question, then the Prime Contractor may again re-bid such subcontracts without application of the PLA to such subcontracts, and award the subcontract accordingly. Work performed under such subcontracts shall not be considered "Project Work."

iii. Developer and Council may negotiate a different approach to ensure competitiveness in subcontracting, at their mutual discretion. For purposes of this Section 4.4, the term "Qualified Contractor" means a licensed, financially qualified contractor with experience in the type of work required and is capable of meeting the job schedule, has submitted a commercially reasonable bid, is bondable, carries appropriate insurance, including Workers' Compensation insurance (or participates in a State recognized Workers' Compensation Alternative Dispute Resolution ("ADR") Program), and is otherwise capable of satisfying all requirements of the bid specifications.

4.5 Compliance with S/LBE Requirements. If in initial efforts to award subcontracts the Prime Contractor receives a set of bids such that there is not sufficient participation by S/LBEs to satisfy S/LBE Requirements while keeping the Project within the 125% Tax Credit Allocation Committee ("TCAC") 9% cost basis limit applicable to the Project, and the Developer or Prime Contractor has identified an S/LBE that would have bid under different PLA terms or without a PLA requirement, then the Prime Contractor may initiate the following process, with Developer's approval. First, the Prime Contractor shall notify the Council, which shall notify the affected Unions. Such notification shall indicate the subcontract(s) under consideration for re-bid. If requested by the Council, such Parties shall meet and confer, with opportunity to come to agreement on revised PLA terms. At the end of a meet and confer period running for ten days from notification of the Council or the meet and confer, whichever is later, the Prime Contractor may initiate a competitive re-bid process or negotiate agreement for the indicated subcontract(s) if necessary to meet the S/LBE Requirement while keeping the Project within the applicable TCAC cost basis limit, either with agreed-to revised PLA terms or without application of this

Agreement to the subcontract(s) in question. Work performed under such subcontracts shall not be considered "Project Work."

ARTICLE V WAIVER

5.1 The Parties acknowledge that this Agreement is a lawful pre-hire agreement within the meaning of Section 8(f) of the National Labor Relations Act, and all Parties and Contractors expressly waive any right which it/they may claim to have to repudiate or otherwise void this Agreement. This Agreement applies to Project Work only, and shall not affect the Section 9(a) status of any other collective bargaining agreement(s) to which any party is signatory.

ARTICLE VI UNION SECURITY

6.1 The Contractor recognizes the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

6.2 No employee subject to this Agreement can be required to join any Union as a condition of being first employed on the Project. For the period during which they are performing Project Work, all employees who are employed by a Contractor shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment for a construction contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues, with the exception that the Union will waive initiation fees for construction workers who are dispatched for work on the Project but are not offered or do not seek membership in the Union. There is nothing in this Agreement that would prevent non-union employees from joining the Union. No employee shall be discriminated against by the Union or at the Project site because of the employee's union membership or lack thereof.

ARTICLE VII REFERRAL

7.1 Union Referral Sources. Except as otherwise specified in this Article, the Unions shall be the sole source of all craft labor employed in performance of Project Work, and the Contractors shall be bound by and utilize the registration facilities and referral systems established or authorized by the Unions.

7.2 Core Workers. A Contractor that is not signatory to a collective bargaining agreement may only employ Core Workers in performance of Project Work as described in this Section.

- i. Definition. A Core Worker is defined as an employee who was on the Contractor's active payroll for at least sixty (60) out of the one hundred and forty (140) calendar days prior to the contract award, and who possesses all required credentials and licenses and the skill to safely perform the work.
- ii. Ratio and Hiring Process. Upon request for workers from a non-signatory Contractor, the applicable Union will first refer a journey-level employee from the hiring hall out-of-work list, and will thereafter refer one of the Contractor's Core Workers, and shall repeat this process, one and one, until the Contractor's crew requirements are met, or until the Contractor has hired five (5) Core Workers, whichever occurs first. Thereafter, all of the Contractor's additional employees for Project Work shall be hired exclusively from the Union's hiring hall out-of-work list(s).
- iii. For the duration of the Contractor's work, the ratio shall be maintained, and when the Contractor's workforce is reduced, employees shall be laid off so as to maintain the same ratio of Core Workers to hiring hall referrals as was applied at corresponding stages of the initial hiring.
- iv. A Contractor that hires any Core Worker(s) to perform work on the Project shall immediately provide the appropriate Union with the name, address, craft classification, and social security number of such Core Worker(s), and shall immediately refer such Core Worker(s) to the appropriate Union to satisfy the requirements of Article VI of this Agreement.

7.3 Sole Operators. A Sole Operator, as defined below, self-performing Project Work, is not required to request dispatch from the Union hall with jurisdiction over the Sole Operator's work. However, if the Sole Operator hires any additional employees subsequent to commencing performance of Project Work, the Sole Operator will be treated as the Core Worker and any subsequent employee(s) will be dispatched from the hiring hall. Before hiring an employee(s) for performance of Project Work, the Sole Operator must notify the Council and the relevant Union and provide evidence of compliance with CSLB and Workers Compensation requirements to the Council and Union. For purposes of this Agreement, a trucking Sole Operator will be treated as the Core Worker, but must nevertheless be dispatched from the hiring hall, and will be exempt from trust fund obligations but must pay representational fees. All Sole Operators, including truckers, must execute the Agreement to be Bound prior to performance of Project Work. "Sole Operator" means a licensed contractor with no employees and exempted by the Contractor's State License Board from the requirement to carry workers' compensation insurance. (See: California Business and Professions Code section 7125.)

7.4 Process for Compliance with Targeted Employment Requirements. When a public entity or jurisdiction providing funding for the Project ("Funding Jurisdiction") imposes a Targeted Employment Requirement as a condition of funding, Contractors may comply with any other recruitment or hiring procedures required by any Funding Jurisdiction. Unions agree to refer local/targeted workers to Contractors on a priority basis, including by using name call procedures where applicable, as needed for Contractors to satisfy the requirement; and if Union

hiring halls do not have local/targeted workers available, Contractors may obtain those local/targeted workers from other sources including the West Oakland Job Resource Center, Cypress Mandela and Rising Sun.

7.5 Alternate Sources. In the event that Unions are unable to fill any request for employees within 48 hours after such written request is made by a Contractor (Saturdays, Sundays, and holidays excepted), the Contractor may employ applicants from any other available source. The Contractor shall first request employees from the West Oakland Job Resource Center, Cypress Mandela and Rising Sun, unless doing so would conflict with the hiring requirements of any applicable funding jurisdiction. Upon hiring employee(s) from any other source, the Contractor shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VI of this Agreement.

ARTICLE VIII NON-DISCRIMINATION

8.1 The Contractors and the Unions agree to comply with all non-discrimination provisions of federal, state and local law, including but not limited to, prohibitions on discrimination based on race, national origin, religion, sex, and sexual orientation, in hiring and in working conditions on the Project.

ARTICLE IX JOB-SITE ACCESS

9.1 Authorized representatives of the Unions shall have access to the Project job sites at all times and locations where work is being performed by members of their Unions.

ARTICLE X WAGES, HOURS AND WORKING CONDITIONS

10.1 Master Agreements. The wages, fringe benefits, hours of work, holidays, designated days off and working conditions on the Project shall be governed by the Master Agreement of the applicable craft Union performing the work.

10.2 Project Management. Developer and Prime Contractor, through the bid documents, may establish a uniform work schedule across crafts of up to eight hours per day, with consistent start and stop times. Overtime for hours performed within that schedule shall be paid if required by Prevailing Wage Determinations.

10.3 Employee Rights Laws. Nothing in this Agreement relieves Contractors of the responsibility to comply with any and all applicable laws related to employee rights, including but not limited to, applicable prevailing wage and worker safety laws.

10.4 Drug Testing. Drug testing protocols for a Contractor and its employees will be as set forth in the applicable Master Agreement.

ARTICLE XI APPRENTICES

11.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractors shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

11.2 Ratios. Each Contractor shall employ apprentices in ratios in compliance with the applicable Master Agreement and state law.

11.3 New Apprentice Sponsorship Requirement. For each \$5 million of Project Work, the Prime Contractor shall ensure that it sponsors at least one New Apprentice and employs that New Apprentice for at least 1,000 hours of Project Work or construction work on other projects during the term of the Prime Contractor's Project Work. New Apprentices retained by any subcontractor may be credited toward the Prime Contractor's satisfaction of this requirement. "New Apprentice" means an Alameda County resident who is newly enrolled (less than 3 months) as a registered apprentice in a state-certified joint labor-management apprenticeship program on the date that such individual is hired or assigned to perform Project Work. New Apprentices retained toward satisfaction of this requirement may be utilized toward satisfaction of Alameda County's "Targeted Disadvantaged Hiring Goal," which requires five percent (5%) of Project Work hours to be worked by Targeted Disadvantaged Workers. Pursuant to County guidelines, Targeted Disadvantaged Workers are residents of Alameda County with incomes below 80% of Area Median Income, and who may also meet any of the following:

- a. Are apprentices in any construction trade with two years or less participation;
- b. Are current or past participants in Apprenticeship Readiness Programs serving Alameda County residents, including but not limited to Cypress Mandela Training Center and Rising Sun Energy Center;
- c. Are current or past participants in Pre-Apprenticeship Programs serving Alameda County residents, including but not limited to Youth Employment Partnership, or construction training programs at the community college level;
- d. Are recipients of public assistance;
- e. Belong to any of the target populations in Alameda County identified in the Measure A1 program, including:

- i. Re-entry individuals;
- ii. Homeless or formerly homeless individuals living in homeless housing;
- iii. Veterans;
- iv. People with disabilities;
- v. Seniors; and
- vi. Transition-age foster youth.

ARTICLE XII **CONTRACTOR SUPPORT CENTER**

12.1 Contractors, Developer and Unions understand the importance of providing opportunities for S/LBEs to participate on projects covered by PLAs, and addressing the barriers to S/LBE participation on public works projects. A Contractor Support Center, funded by the County, will provide technical assistance, assessment, outreach, education and other contractor support services and resources that assist S/LBEs in complying with the terms of this Agreement where applicable, and with other requirements imposed by the County. With regard to this Agreement, the Contractor Support Center will provide the following services, among other support efforts:

- assist S/LBEs in preparing to bid on PLA-covered contracts;
- build S/LBEs' understanding of labor standards and other requirements of PLAs and Master Agreements; and
- assist S/LBEs in obtaining bonding, pre-qualification, workforce development, and contract compliance.

12.2 Contractors, Developer and Unions support the economic development of S/LBEs and agree to cooperate with the Contractor Support Center to promote growth and development of S/LBEs, and agree to work proactively with the Contractor Support Center to maximize utilization of these underutilized businesses, to comply with terms of this Agreement and with other County requirements. The Unions will coordinate with the Contractor Support Center to refer workers from the hiring hall as requested by S/LBE Contractors in order to support their efforts to participate on PLA covered projects.

12.3 The Contractor Support Center shall convene, and Developer, the Council, and the Prime Contractor shall attend, a quarterly meeting to discuss implementation of the programs described above, and issues related to S/LBE participation on Measure A1-funded projects.

ARTICLE XIII **HELMETS TO HARDHATS**

13.1 The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction industry of veterans who are interested in careers in the industry. The

Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (“Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

13.2 The Council, Unions and Contractors agree to coordinate with the Center to participate in the integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XIV **MANAGEMENT RIGHTS**

14.1 Consistent with the Master Agreements, the Contractors shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed that limit or restrict production, or limit or restrict the working efforts of employees, except that lawful manning provisions in a Master Agreement shall be recognized and applied on the Project.

ARTICLE XV **PRE-CONSTRUCTION CONFERENCES & JOINT LABOR MANAGEMENT MEETINGS**

15.1 The Prime Contractor shall convene, and the Council shall conduct, a pre-construction conference at a time and location mutually agreeable to the Council, with the Unions and with representatives of all involved Contractors, who shall be prepared to announce craft assignments and to discuss in detail the scope of work and the other issues set forth below, at least fifteen (15) working days prior to initial commencement of any Project Work, and again five (5) working days prior to the commencement of work on any subsequently awarded Construction Contract, or other period as mutually agreed between the Prime Contractor and the Council.

15.2 The pre-construction conference shall be attended by a representative of each participating Contractor and each affected Union, and the Developer may attend at its discretion.

15.3 The pre-construction conference shall include but not be limited to the following subjects:

- a. A listing of each Contractor’s scope of work;
- b. The craft assignments;
- c. The estimated number of craft workers required to perform the work;
- d. Transportation arrangements;

- e. The estimated start and completion dates of the work;
- f. Discussion of pre-fabricated materials;
- g. Targeted Contracting Requirements;
- h. Targeted Employment Requirements.

15.4 Labor-Management Review Meetings. In order to ensure that the terms of this Agreement are being fulfilled and the concerns of the Parties are addressed, the Prime Contractor and the Council, or designated representatives thereof, shall meet on a periodic basis during the term of construction.

ARTICLE XVI **GRIEVANCE AND ARBITRATION PROCEDURES**

16.1 Disputes Regarding Violations of Master Agreements. Any dispute concerning the interpretation of a Master Agreement shall be governed by the grievance and arbitration provisions of the applicable Master Agreement. Any dispute involving the discipline and/or discharge of an employee working on the Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

16.2 Disputes Regarding Violations of Project Labor Agreement. Any grievance concerning the interpretation or application of this Agreement shall be resolved as follows:

Step 1, Informal Resolution: The grieving party shall give notice to and schedule a meeting with the other party within five (5) working days after the occurrence of the dispute, or within twenty (20) working days after the party reasonably should have become aware of the facts giving rise to the dispute, in an attempt to resolve the dispute. Any dispute resolved at Step 1 shall be non-precedential to future disputes on this Project.

Step 2, Resolution by Parties of Written Grievance: If the dispute is not resolved informally at Step 1, the grievance shall be reduced to writing and served upon the other party within ten (10) working days after the conclusion of efforts to resolve the dispute at Step 1. Regardless of which party has initiated the grievance proceeding, prior to a Step 2 meeting, the Union shall notify its International Union representative, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Prime Contractor, Developer, and Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3, Resolution by Developer and Council: If the dispute is not resolved within five (5) working days after its referral to Step 2, either involved party may submit it within five (5) working days to the Developer and the Council, which shall meet within five (5) working days after such referral (or such longer time as mutually agreed by Developer and Council), to confer in an attempt to resolve the grievance. If the Developer and Council agree on a resolution of the grievance, that decision shall be conveyed in writing to all parties to the grievance, and shall be binding on all parties to the grievance. Developer and Council shall have 30 days to attempt to resolve the grievance through mutual agreement. For disputes involving a

Contractor that is an S/LBE, a representative of the Contractor Support Center (or other representative of S/LBEs designated by the County) shall participate and must also sign off on any resolution.

Step 4, Resolution by Binding Arbitration: If the dispute is not resolved at Step 3 within 30 days as referenced above, either party to the grievance may, within ten (10) working days, move the dispute to arbitration. All grievances moved to arbitration shall be submitted to one of the following arbitrators, who shall be chosen through alternate striking of names:

Robert Hirsch

William Riker

David Weinberg

Catherine Thompson

Noel Brand

The party entitled to first striking of a name from the list of arbitrators shall be determined by a coin toss held by parties to the dispute. If the arbitrator selected as described above is unavailable to arbitrate the dispute, then for that dispute the parties to the grievance shall mutually agree on an arbitrator who is available. If the parties to the grievance cannot mutually agree on an arbitrator within 14 business days, then an arbitrator shall be selected from the remaining four (4) arbitrators listed above, through alternate striking of names, with first strike based on results of a coin toss held by the parties to the grievance.

16.3 Decision of Arbitrator. The decision of the Arbitrator in Step 4 shall be final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) days after completion of the hearing unless such time is extended by mutual agreement. All arbitrator awards shall be issued in writing as expeditiously as possible, but no later than 45 days after the conclusion of the hearing, indicating the ruling and remedy, and provided to the parties to the grievance, the Council, the Prime Contractor, and the Developer. This 45-day limit may be reduced if required to satisfy Developer's project funding deadlines; in such case Developer will provide notice to the arbitrator, the Council, the Prime Contractor, and parties to the grievance, prior to retention of the arbitrator.

16.4 Time Limits. Failure to timely file and/or process a grievance will constitute a waiver of the grievance. However, the parties may agree (orally or in writing) to extend the time limits set forth herein. Construction of the Project shall not be delayed due to filing of a grievance, or during the period of dispute resolution.

16.5 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement by a Union, the grieving Union may request that the Developer or Prime Contractor, as applicable, utilize retention provisions set forth in the Prime Contract or relevant

subcontract to withhold and retain an amount from what is due and owing to the Contractor against whom the grievance is filed, sufficient to cover the damages alleged in the grievance should the Union prevail. The amount shall be retained until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

ARTICLE XVII NO-STRIKE/NO-LOCKOUT PROVISIONS

17.1 No Strike. For the duration of the Project, neither the Council nor any Union shall exercise, initiate, engage in, encourage, any strike, sympathy strike, walkout, slowdown, sit-down, picketing, or work stoppages (together “Work Stoppage”) at the Project. Any employee who participates in or encourages any Work Stoppage on the Project shall be subject to disciplinary action, including and up to discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of six months.

17.2 No Lockout. For the duration of the Project, there shall be no lockout of employees by the Contractors on the Project.

17.3 Expiration of Local and Other Applicable Agreements. There shall be no strike, picketing, refusal to work or other work stoppage or lockout as a result of the expiration of any labor agreement having application at the Project and/or failure of the parties to that agreement to reach a new contract. If a new applicable Master Agreement is ratified and signed by one or more Unions during the term of this Agreement, and if such new Master Agreement provides for retroactive wage and/or benefit increases, then each affected Contractor shall pay to its employees who performed work covered by this Agreement at the Project during the period between the effective dates of such Master Agreement, an amount equal to any such retroactive wage and benefit increases established by such new Master Agreement, retroactive to whatever dates are provided by the new Master Agreement for such increases to go into effect, for each employee’s hours worked on Project Work during the retroactivity period.

17.4 Non-Payment of Fringe Benefits and/or Payroll. Notwithstanding other provisions of this Agreement, each Union retains the right to withhold the services of its members (but not a right to picket) from a particular Contractor that fails to make timely payments to the Union’s fringe benefit Trust Funds or fails to timely pay its weekly payroll. The Unions agree to give the Prime Contractor three (3) working days’ notice for Trust Fund violations and one (1) working day’s notice for wage violations prior to withholding labor under this Section, to enable the Prime Contractor to cure the deficiencies. The Prime Contractor reserves the right to withdraw the contract and/or subcontract from a Contractor who is in default of its fringe benefit and/or payroll obligations and put such contract and/or subcontract or remainder thereof out for re-bid.

17.5 Notification: If the Prime Employer or Project Manager contends that any Union has violated this Article, it will notify in writing the Secretary-Treasurer of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to

instituting the expedited arbitration procedure set forth in Article XVIII. The principal officer(s) of a Union will immediately instruct and otherwise use the best efforts of his or her office to cause the employees whom the Union represents to cease any Work Stoppage. A Union complying with this provision will not be held responsible for the unauthorized conduct of the workers it represents.

ARTICLE XVIII
EXPEDITED ARBITRATION PROCEDURE FOR STRIKES AND LOCKOUTS

18.1 Any Party alleging that a violation of the No-Strike/No Lockout Article has occurred may institute the following procedure to enforce such provisions. Such procedure is in lieu of any other action at law or equity.

18.1.1 Notification. A party invoking this procedure shall notify, by email and telephone, the party alleged to be in violation, the Prime Contractor, the Developer, and the Council of the alleged violation.

18.1.2 Selection of Arbitrator. Upon receipt of notice alleging a violation, the party invoking this procedure will notify, by telephone and by email, Robert Hirsch (the “Permanent Arbitrator”), or, if he is unavailable, William Riker (the “Alternate Arbitrator”). If neither the Permanent Arbitrator nor the Alternate Arbitrator is available within 24 hours of the notification described in 18.1.1, Developer and the Council shall select an arbitrator from the list in Section 15.3, by alternate striking of names after a coin flip. The selected arbitrator shall be contacted by telephone and e-mail.

18.1.3 Hearing. The arbitrator shall set a hearing within 24 hours of selection (if it is contended that a violation is ongoing), and shall notify the parties to the dispute, the Developer, the Prime Contractor, and the Council (together, the “Affected Parties”), by email and telephone, of the place and time for the hearing. The hearing shall be completed in one session with appropriate recesses at the arbitrator’s discretion, unless otherwise agreed upon by parties to the dispute. A failure of any Affected Party to the dispute to attend the hearing shall not delay the hearing of evidence or the issuance of any ruling by the arbitrator.

18.1.4 Award. The sole issue at the hearing shall be whether or not a violation of the No-Strike/No-Lockout Article has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages. The arbitrator shall issue a ruling in writing within three (3) hours after the close of the hearing, and such ruling shall be binding on all parties to the dispute. The ruling may be issued without a written opinion. If any Affected Party desires a written opinion, then the arbitrator shall issue one within fifteen (15) days after the close of the hearing, but the parties shall not delay compliance with or enforcement of the award pending a written opinion. The arbitrator may order cessation of the violation of this Agreement and other appropriate relief. The arbitrator shall transmit the ruling to all Affected Parties by mail and by e-mail, upon issuance. Should a party found in violation of this Article fail to comply with the arbitrator’s order to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000) per shift for which it failed to comply, or portion thereof, until

such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

18.2 Court Enforcement. The Arbitrator's award may be enforced in any court of competent jurisdiction. The party filing such an enforcement proceeding shall give written notice to all other Affected Parties. In the proceeding to obtain a temporary order enforcing the arbitrator's award, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all Affected Parties by hand or delivered by certified mail.

18.3 Waiver of Rights. Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

18.4 Costs. The fees and expenses of the arbitrator shall be divided equally between the parties to the dispute, and each party shall bear its own attorneys' fees.

ARTICLE XIX WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

19.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

19.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

19.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

19.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Prime Employer and the Developer will be advised in advance of all

such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XX SUCCESSORSHIP

20.1 This Agreement is and shall be binding and legally effective upon any successor in interest to any Party and any Contractor. Successors of Developer and Prime Contractor include, whether by merger, acquisition, or other means, any entity that acquires full or partial rights to control or coordinate construction of any portion of the Project to which the Prime Contract pertains, including but not limited to through replacement of any Party or Contractor's rights or interest in the Project, or title to all or a portion of the Project, whether by sale, lease, option, receivership, bankruptcy proceedings or other transfer, or by contribution to partnership, joint venture or other entity, or by any means for any reason. Any agreement or transaction establishing successorship as described in the previous sentence shall include an express assumption of the obligations of this Agreement, including this successorship provision. The transferring Party or Contractor shall provide the Council and Developer with notice in writing at the close of any such agreement or transaction, and an original executed assumption of this Agreement. Any sham transfer is a breach of this provision.

20.2 The Parties agree that in the event any transferring Party or Contractor breaches Paragraph 20.1 above, actual damages to the Unions or their members would be unreasonably difficult, costly, inconvenient or impracticable to calculate. Accordingly, the Parties agree to liquidated damages that bear a reasonable relationship to the actual harm suffered.

20.3 The Parties agree that in the event a transferring Party or Contractor breaches Paragraph 20.1 above, the breaching entity shall pay liquidated damages that the parties have agreed will be represented by the *Alcan* remedy which is based upon the wages and fringe benefits set forth in the respective Union's Master Agreement for each hour worked in violation of this Agreement. The Arbitrator may include an award of attorneys' fees to the Union if it prevails in any arbitration regarding the enforcement of the successorship provisions of this Agreement. Upon execution and delivery of an agreement assuming all the obligations of this Agreement by a financially responsible successor pursuant to the requirements of Paragraph 20.1, the transferring Party or Contractor shall be released from liability for the payment of liquidated damages under this Article.

ARTICLE XXI SAVINGS CLAUSE

21.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder the Agreement shall remain in full force and effect, except as provided in Section 21.2. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void by a

court of competent jurisdiction the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

21.2 The parties agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

ARTICLE XXII MISCELLANEOUS PROVISIONS

22.1 Execution. This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Faxed or emailed PDF signature pages transmitted to all other Parties shall be deemed the equivalent of original signatures.

22.2 Authority of Signers. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to execute this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement. Each Union listed below is an affiliate of the Council and is authorized and entitled to enter into this Agreement due to said affiliation.

22.3 Opportunity to Review. The Parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof.

22.4 Section Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

22.5 Amendment. This Agreement may be amended in writing executed by the Developer, Prime Contractor and the Council. Such amendment shall be binding on all Parties and Contractors. All Parties and Contractors shall be given written notice of any amendments.

22.6 Funding Source Requirements. This Agreement shall be implemented and enforced only to the extent where not in conflict with requirements of federal, state, or local law, or with requirements imposed by significant sources of public funding for the Project, subject to the following meet and confer process: if federal, state, or local law, or a significant source of public funding, imposes requirements that conflict with this Agreement, then the Council, Developer, and the Prime Contractor shall meet and confer in good faith to consider amendment of this Agreement to conform with requirements of the relevant law or funding source. This Agreement does not require Developer to forego significant sources of public funding for the Project in order to preserve the ability to comply with this Agreement.

ARTICLE XXIII
TERM

23.1 Term. This Agreement shall become effective upon the date of its execution by the Developer, the Prime Contractor, and the Council (on behalf of itself and the Unions listed below, pursuant to an executed delegation of authority), and shall continue in full force and effect until completion of the Project Work pursuant to the Prime Contract to which this Agreement is attached and incorporated.

PRIME CONTRACTOR

By: _____
Name/Title: _____

Date: _____

DEVELOPER

By: _____
Name/Title: _____

Date: _____

BUILDING AND CONSTRUCTION TRADES
COUNCIL OF ALAMEDA COUNTY

By: _____
Name/Title: _____

Date: _____

ON BEHALF of the following affiliated unions, each of which has assented to becoming Party to this Agreement and authorized the Council to execute this Agreement through a Delegation of Authority executed on _____.

- Boilermakers Local #549
- Bricklayers & Allied Craftworkers Local #3
- District Council 16, International Union of Painters and Allied Trades, on behalf of itself and its affiliated local Unions
- Electrical Workers Local #595
- Elevator Constructors Local #8

[list continued on page to follow]

Insulators Local #16
Iron Workers Local #378
Northern California Carpenters Regional Council, on behalf of itself and its
affiliated local Unions
Northern California District Council of Laborers, on behalf of itself and its
affiliated local Unions
Operating Engineers Local #3
Plasterers Local #66
Plasterers and Cement Masons Local #300
Roofers & Waterproofers Local #81
Sheet Metal Workers Local #104
Sign & Display Local #510
Sprinklerfitters Local #483
Teamsters Local #853
UA Steamfitters, Pipefitters, Plumbers & Gas Fitters Local #342
UA Underground Utility & Landscape Irrigation Local #355

Addendum A

[PROJECT NAME] PROJECT LABOR AGREEMENT

AGREEMENT TO BE BOUND

The undersigned, as a contractor on the [PROJECT NAME] Project (the “Project”), for and in consideration of the award to it of a contract to perform work on the Project, has received and had an opportunity to review the Project Labor Agreement for the Project (the “Agreement”), and in consideration of the mutual promises made in the Agreement, hereby agrees to the following with regard to all Project Work:

- accepts and agrees to be bound by the terms and conditions of the Agreement, as the Agreement may be amended;
- certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement;
- agrees to secure from any subcontractor that it retains, and from any successors or assigns, a duly executed “**Agreement to be Bound**” in form identical to this document;
- subscribes to, adopts and agrees to be bound by the written terms of all applicable legally established trust agreements and plans for the provision of fringe benefits, including, but not limited to, Health and Welfare, Pension, Vacation, Apprenticeship and Training, and Worker Protection and Assistance, pursuant to the appropriate craft agreement, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds, and agrees to execute a separate Subscription Agreement(s) when such trust fund(s) requires such document(s).

CONTRACTOR/SUBCONTRACTOR: _____

California Contractor State License No. or Motor Carrier Permit No.: _____

Name of Authorized Person (print): _____

Signature of Authorized Person: _____

Title of Authorized Person: _____

Telephone Number of Authorized Person: _____

Address of Authorized Person: _____

Addendum B

[DEVELOPER LETTERHEAD]

[DATE]

Andreas Cluver
Secretary-Treasurer
Building and Construction Trades Council of Alameda County
7750 Pardee Lane, Suite 100
Oakland, CA 94621

Re: Project Labor Agreement for Measure A1-funded affordable housing project

Dear Mr. Cluver:

This letter amends the Project Labor Agreement for [PROJECT NAME] (the “Project”), entered into between [NAME OF DEVELOPER], [NAME OF PRIME CONTRACTOR], the Building and Construction Trades Council of Alameda County, and the labor organizations signatory thereto, on [EFFECTIVE DATE] (the “PLA”).²

This letter applies exclusively to work performed on the Project that is within the jurisdiction of the Northern California Carpenters Regional Council (referred to herein as “Carpenters’ Work”). Due to special factors unique to the affordable housing construction context, the parties to this letter agree that Sections 4.4 and 4.5 of the PLA shall not be applicable to Carpenters’ Work.

All parties envision this period as an opportunity to build a strong working relationship for the benefit of local workers and residents, toward the shared goals of maximum construction of affordable housing units, strong labor standards, fair treatment of workers, and shared economic opportunities.

This letter shall apply to the PLA for the duration of its term. If you agree to terms of this letter, please indicate your acceptance in the space provided below.

It is so agreed,

[Developer signature block]

[Prime Contractor signature block]

[Council signature block]

[Carpenters signature block]

² The PLA is the template A1 PLA negotiated between East Bay Housing Organizations (“EBHO”), the Non-Profit Housing Association of Northern California (“NPH”), and the Building & Construction Trades Council of Alameda County (“Council”) and adopted by the Alameda County Board of Supervisors.

ATTACHMENT C:

PROPOSED FORM OF COUNTY RESOLUTION

WHEREAS, on November 7, 2017, the County adopted a resolution establishing Measure A1 Housing Bond Implementation Policies related to construction efficiency and labor peace on certain affordable housing construction projects awarded funds from Alameda County Measure A1 (Resolution No. 2017-336, Agenda Items 14.1 and 14.2, as amended and approved); and

WHEREAS, such Policies required all new construction of affordable housing projects funded by Measure A1 bond proceeds that are 80 units or larger (“Covered Projects”) to have a project labor agreement; and

WHEREAS, such Policies directed representatives of construction labor unions and affordable housing developers to negotiate a template project labor agreement for such projects; and

WHEREAS, such representatives have negotiated a template PLA attached hereto as Exhibit A, with input from representatives of the small/local contracting community and other stakeholders; and

WHEREAS, such representatives have entered into a Memorandum of Agreement recommending that the County adopt their negotiated template PLA for application to Covered Projects;

NOW THEREFORE BE IT RESOLVED that the template PLA attached as Exhibit A to this Resolution (the “A1 PLA”) shall apply to all Covered Projects, and County staff shall include such a requirement in the funding agreements, grant agreements, term sheets, or equivalent document(s) applicable to each Covered Project; and

BE IT FURTHER RESOLVED that the A1 PLA shall apply to Covered Projects that are awarded Measure A1 funding by the County from November 7, 2017 through December 31, 2020 (the “Pilot Period”) (*i.e.*, not including projects awarded funding prior to that date as identified in the Policies adopted on November 7, 2017). The County will initiate an evaluation of the impact of the PLA on the Covered Projects and the Rental Housing Program to determine if the minimum threshold of 80 units can be feasibly adjusted, with the intent of lowering the unit threshold to include more Measure A1 Bond Rental Housing Program funded affordable housing projects under the PLA requirement, if feasible.

BE IT FURTHER RESOLVED that if there is any conflict between the terms of the A1 PLA and/or this Resolution and the terms of any prior-established County policies and procedures, including the Policies adopted on November 7, 2017, the terms of the A1 PLA and/or this Resolution shall govern; and

BE IT FURTHER RESOLVED that in determining the application of the 80-unit threshold:

1. Both affordable and market-rate units shall be included in the unit count, so long as such units are part of the same complex and are not separately-financed.
2. Separately-financed projects that are constructed on a single podium shall not be considered a single project for purposes of determining whether any project satisfies the 80-unit threshold. For example, if two separately-financed projects share a podium, and only one project receives A1 funding, then only the units in the A1-funded project shall be counted toward the 80-unit threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project).
3. Separately-financed projects that are part of a single master-plan entitlement process shall not be considered a single project for purposes of determining whether any project satisfies the 80-unit threshold. For example, if several separately-funded projects are all considered in a single entitlement process, but only one project receives A1 funding, then only units in the A1-funded project shall be counted toward the 80-unit threshold (and, if there are 80 or more units, the A1 PLA shall apply only to the A1-funded project).

BE IT FURTHER RESOLVED that the following terms shall be included in the funding agreements, grant agreements, term sheets, or equivalent document(s) applicable to each Covered Project:

1. The Developer must require execution of and compliance with the A1 PLA as a condition of each Prime Contract on a Covered Project, and the A1 PLA shall be executed by the Developer, the Prime Contractor, and the Trades Council.
2. In the event there is more than one Prime Contract on a project, a separate A1 PLA shall be executed for each Prime Contract by the Developer, the Prime Contractor, and the Trades Council, regardless of the size of the Prime Contract.
3. **Tenant Improvements.** On all Covered Projects, for all tenant improvement work contracted by the Developer and begun within one year of filing of the Notice of Completion, the A1 PLA shall be executed by the Developer, the Prime Contractor, and the Trades Council. For all tenant improvement work contracted by the tenant and begun within one year of filing of the Notice of Completion, the A1 PLA shall be executed by the tenant, the Prime Contractor, and the Trades Council. In the event there is more than one Prime Contract for tenant improvement work, a separate A1 PLA shall be

executed for each Prime Contract. However, notwithstanding the foregoing, the PLA requirement herein shall not apply to following tenant improvement work:

- i. Work contracted by a small business that is opening or relocating its first or second business and is owned by a resident of Alameda County, excluding franchises and/or chains;
- ii. Work contracted by a nonprofit entity that primarily operates in Alameda County; and
- iii. Work contracted by a residential tenant or residential unit purchaser who takes title to only one unit (work contracted by a tenant or unit purchaser who takes title to more than one unit for residential or commercial purposes or to use as an investment shall be covered).

BE IT FURTHER RESOLVED that in the event a Developer receiving Measure A1 funds for a Covered Project elects to negotiate a PLA with the Trades Council that is different from the template A1 PLA, such other PLA must be approved by the County in order for the Covered Project to receive Measure A1 funds.

THE FOREGOING was PASSED and ADOPTED by a majority vote of the Alameda County Board of Supervisors this {etc. as required by County}