



Cushman & Wakefield  
555 12<sup>th</sup> Street Suite 1400  
Oakland, CA 94607  
Lic #00616335  
(510) 465-8000 Tel  
(510) 465-1350 Fax

October 21, 2022

To: All Interested Parties

**Re: 950 West Tower Avenue, Building 39, Alameda CA – Term Sheet**

Dear Interested Tenant:

On behalf of the City of Alameda (Landlord), Cushman & Wakefield has been authorized to offer 950 West Tower Avenue (Building 39) to qualified parties for Lease. This letter will outline the terms and conditions under which Landlord proposes to enter into the contemplated agreement. A final agreement, if any is reached, will be based on the responses to this Proposal, and the final terms may be less or more favorable to the City than what is outlined here. Any final agreement will be subject to City Council approval. That approval will be in the Council's sole and absolute discretion and may or may not be based solely on the economics of the proposals that are received. **To be considered, all responses to this Proposal must be received no later than December 22, 2022 @ 2PM Pacific Standard Time.**

**Project:** Alameda Point

**Premises:** 950 West Tower Avenue, Building 39. An approximate 106,000 square foot building.

**Tenant:** Please State Tenant Entity

**Landlord:** The City of Alameda, a charter city and municipal corporation

**Use:** The premises shall be used as \_\_\_\_\_. Please be specific with your use description and provide collateral information as appropriate so that we can understand your business.

**Lease Commencement:** Upon approval by the Alameda City Council, the date of which approval shall be deemed to be the effective date of the ordinance approving the Lease as required by the City Charter.

**Lease Term:** The lease term shall be for one hundred twenty (120) months.

**Security Deposit:** A security deposit or other credit enhancement shall be due at Lease execution based on a review of Tenant financials. Please provide audited financials including a balance sheet and three years of profit and loss statements. If these statements are not available, please contact the Cushman & Wakefield team for a copy of that current Lease Application form.

**Rent:** Rent shall be paid on a Net basis with Tenant responsible for payment of their possessory tax obligations, casualty insurance, general commercial liability insurance and all costs of facility

maintenance. Rent shall be paid on the following NNN schedule:

<u>Months:</u>	<u>Rent Per Month</u>
1-12	\$ 100,700.00 (\$.95/SF)

Base Rent will increase three and one half percent (3.5%) annually on the anniversary of the Lease Commencement Date.

**Capital Improvement Funds:**

The City delivers buildings on an “as-is, where-is” basis and does not offer Tenant Improvement Funds. However, from time to time, the City will offer Capital Credits in the form of Rent Abatement to deal with Deferred Maintenance issues. Without committing to provide such funds, the City is giving applicants the opportunity to inspect the Premises during the offering period. Any requests for Capital Improvement Funds must include backup from a reputable contractor or inspector. Such Credits may or may not become part of the final agreement in the City Council’s sole and absolute discretion.

**Certificate of Occupancy/Building Inspection**

Requirements for Certificates of Occupancy are covered under Section 110 of the 2007 California Building Code. A Certificate of Occupancy is issued under the following four situations:

- 1) Change in tenant, with no change in occupancy group, where no work requiring permits has taken place.
- 2) Change in tenant, with no change in occupancy group, where work requiring permits has taken place.
- 3) Change in tenant, where a change in the occupancy group occurs, where no work requiring permits has taken place.
- 4) Buildings or structures or portions thereof which are new or previously unoccupied.

Certificates of Occupancy for situations 2 and 4 will be issued as a part of the permit process. Situations 1 & 3 will be initially reviewed at the time the business license is checked for zoning compliance.

To schedule a Building Inspection, please call (510) 747-6830. Forms and additional information can be found at: <http://alamedaca.gov/business/starting-a-business>

**Business License:**

All individuals, partnerships, corporations, and sole proprietors conducting business in the City of Alameda are required to have a business license. For new businesses, a zoning clearance form must be signed off by the Permit Center, before filling out a business license form, purchasing property or signing lease agreements. Forms and additional information can be found at: <http://alamedaca.gov/business/starting-a-business>

**Where:** The office is located on the first floor of City Hall, Room 190, at 2263 Santa Clara Avenue, Alameda, California.

**When:** The office is open four days a week:

7:30 a.m. - 4:30 p.m. - Monday through Thursday

**Filming Requirements:**

Permits for filming in Alameda are issued by the Building Division Permit Center of the City of Alameda.

**Where:** The office is located on the first floor of City Hall, Room 190, at 2263 Santa Clara Avenue, Alameda, California.

**When:** The office is open four days a week:

7:30 a.m. - 4:30 p.m. - Monday through Thursday

Permits can be applied for and submitted each work day but must be submitted before the final work hour of each day.

**What:** A Film/photography permit is required. Please download and complete the document. You can mail, fax, or deliver the completed form to the Permit Center.

Building Division Permit Center  
2263 Santa Clara Avenue  
Room 190  
Alameda, CA 94501  
(510) 747-6800  
(510) 747-6804 fax

Permit processing times are:

Two business days if no traffic control is required

Four business days if your activity includes stunts and/or pyrotechnics

Ten business days if your activity will involve traffic control including street closures.

**Prevailing Wage Requirement:**

Tenant acknowledges that all capital improvement and construction projects at Alameda Point are subject to Prevailing Wage Law and Requirements. Tenant also acknowledges that it has been made aware of certain requirements under the City's Project Labor/Stabilization Agreement (Resolution #15740 dated February 2, 2021). A copy of the Statute follows as an Exhibit to this Letter.

**Alameda City Council Approval:**

Tenant acknowledges that any lease term longer than 12 months will require Alameda City Council Approval.

**Tenant Improvements:**

Landlord to deliver the Premises in "as-is" condition. Any repairs or modifications to the leased Premises necessary for Tenant's use or occupancy will be at the sole cost and expense of Tenant.

**Signage:**

Tenant shall be allowed to place identity signage on the premises, subject to landlord approval. All signage will be provided by Tenant at their sole cost and expense.

**Zoning:**

Tenant at their sole and absolute discretion shall determine the suitability of the zoning at the Premises for their proposed use.

**Tenant's Insurance:**

Tenant shall maintain the following insurance and provide Landlord with copies of certificates of insurance, naming the City of Alameda and River Rock Realty as additional insured's:

Commercial General Liability:	\$2 million per occurrence
Workers Compensation <sup>(1)</sup> :	\$1 million
Automobile (if applicable) <sup>(2)</sup> :	\$1 million
Commercial Pollution Legal Liability: (if applicable)	\$2 million
Property <sup>(3)</sup> :	***See #3 below
Business Interruption:	Representing loss of at least approximately twelve (12) months of income.

<sup>(1)</sup>Worker's Comp - if no employees, Tenant must send letter stating no employees.

<sup>(2)</sup>Auto - If no company owned auto, Tenant must send letter stating no company owned autos.

<sup>(3)</sup>Coverage against all risks of loss (excluding flood and earthquake). Coverage shall include full replacement cost with no coinsurance penalties, and coverage shall extend to include any tenant improvements or betterments.

**Tax Obligation:**

Tenant shall contact the Alameda County Assessor to determine its Possessory Interest tax obligation for the term of the lease and arrange for direct payment to the Assessor. In addition, Tenant will be required to pay its proportionate share of other taxes and assessments which may include general and special bonds and assessments, charges, fees and levies for transit, housing, police, fire, flood control, infrastructure or other governmental or quasigovernmental services.

**Transportation Demand Management Plan Compliance:**

As required by the Mitigation Monitoring and Reporting Program (MMRP) from the Alameda Point EIR, and the Alameda Point Zoning District in Section 30-4.24, all new development at Alameda Point will be required to comply with this Plan as part of any Disposition and Development Agreement (DDA) between the City and a developer, and as a condition of approval for any planning approval, including Development Plan, use permit, or design review. Any DDA and condition of approval will require that all property owners pay a special tax to fund the Plan and require through covenants, conditions and restrictions, or other enforceable real property interest, that run with the land that all commercial tenant associations, major employers, residential tenant association, and homeowner's associations join the TMA, file a Compliance Strategy with the TMA consistent with this Plan, implement their Compliance Strategy, and refine it, as necessary.

Employers, residential complexes, or associations are required to prepare and submit a Compliance Strategy for approval. Compliance Strategies outline tenant plans to meet trip reduction requirements. Provides basic tenant information and demographics, current travel modes, special requirements (e.g., shift overlaps or senior / disabled needs); describes the TMA services, incentives and programs tenant will promote internally, identifies Transportation Coordinator. Tenants

may submit their own comprehensive TDM program if they prefer. The TMA reviews Strategies for reasonableness, cost-effectiveness, and awareness and effective use of available TMA services.

**Confidentiality:** The material contained herein is confidential. It is intended for the use of Tenant and Landlord solely in determining whether they desire to enter into a lease and is not to be copied nor disclosed to any other person. In the event Tenant or Landlord does not enter into the contemplated transaction, they will continue to keep such information and material confidential.

**Financial Review:** This proposal is made subject to Landlord's review and approval of Tenant's financial condition.

**Brokerage Agency Disclosure:** With regard to the proposed lease between the City of Alameda as Landlord and \_\_\_\_\_ as Tenant, Cushman & Wakefield of California, Inc., a California corporation ("C&W"), as the Selling Agent, makes the following disclosure: C&W exclusively represents the Landlord, and does not act on behalf of Tenant.

The undersigned acknowledge and agree with the above disclosure and consent to the agency relationship specified.

**Brokerage Commission:** Both Landlord and Tenant acknowledge that \_\_\_\_\_ is Tenant's exclusive broker and Cushman & Wakefield of California, Inc. is Landlord's exclusive broker and that no other real estate broker or agent is entitled to or can claim a commission in connection with this lease. Landlord shall pay \_\_\_\_\_ a commission equal to two and one-half percent (2.5%) of the gross lease value for the first five years of the term and one and one-quarter percent (1.25%) for years six through ten of the lease term. The commission shall be paid 50% upon full lease execution and 50% upon occupancy of the Premises.

**Non-Binding Letter of Intent/Subject to Lease Approval/Execution:** This letter is only a proposal to negotiate and is neither an offer nor a contract. This proposal is only a list of the above terms and conditions that may or may not become a part of the final Lease. This proposal is not intended to be binding or to impose any obligations whatsoever on either party, including any obligation to bargain in good faith. No covenants are implied. The parties do not intend to be bound by an agreement until both parties have executed a formal written Lease contract. Landlord retains the right to review multiple offers to lease concurrently and Landlord shall not be prohibited from negotiating with other parties to lease the same Premises until a formal written Lease contract is fully executed by both parties.

In addition, this letter is submitted subject to review and acceptance of the final terms and conditions of the Lease and related documents. Nothing contained herein shall be binding on either party unless and until such documents are approved, fully executed and exchanged by both parties. Either party is free to terminate the negotiations at any time, and will not by doing so incur any additional obligations or liability.

Any lease document shall be subject to Alameda City Council final approval. Until such time as Alameda City Council approval has occurred the parties are not bound by any agreement.

**Time is of the Essence:** This Letter of Intent shall expire at 5:00 p.m. on December 22, 2022.

If you have any questions, please do not hesitate to call me at 510-891-5817.

Sincerely,

**CUSHMAN & WAKEFIELD OF CALIFORNIA, INC.** - Lic. #00616335

John H. McManus, CCIM, MCR  
**Vice Chairman**  
Lic.01129064

**Agreed and Accepted by:**

***TENANT:***

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

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

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

## **Attachment A**

### **Disclosure Regarding Real Estate Agency Relationship (As required by the California Civil Code Section 2079.16)**

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction. As used herein "Seller" also means "Lessor" and "Buyer" also means "Lessee".

#### **SELLER'S AGENT**

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

#### **BUYER'S AGENT**

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

#### **AGENT REPRESENTING BOTH SELLER AND BUYER**

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE  
HEREOF.**

[Acknowledgement Follows]

[INSERT FULL CUSHMAN & WAKEFIELD ENTITY NAME]

Agent

\_\_\_\_\_ Date

[INSERT BROKERAGE PROFESSIONAL'S NAME]

Salesperson or Broker Associate, if any

\_\_\_\_\_ Signature

\_\_\_\_\_ Date

[INSERT LANDLORD/SELLER OR TENANT/BUYER NAME]

Landlord/Seller

\_\_\_\_\_ Signature

\_\_\_\_\_ Date

[INSERT LANDLORD/SELLER OR TENANT/BUYER NAME]

Landlord/Seller

\_\_\_\_\_ Signature

\_\_\_\_\_ Date

Note: As used herein "Seller" also means "Lessor" and "Buyer" also means "Lessee".

**CALIFORNIA CIVIL CODE SECTIONS 2079.13-2079.24**

**2079.13.** As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: **(a)** "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. **(b)** "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. **(c)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. **(d)** "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) or Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. **(e)** "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. **(f)** "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. **(g)** "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(h)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. **(i)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(j)** "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(k)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(l)** "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. **(m)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(n)** "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. **(o)** "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. **(p)** "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

**2079.14.** Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: **(a)** The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). **(c)** Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required. **(d)** The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

**2079.15.** In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

**2079.16.** [The language of Section 2079.16 appears on the front of this form.]

**2079.17.** (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

(Name of Seller's Agent, Brokerage firm and license number) \_\_\_\_\_  
is the broker of (check one):

the seller; or

both the buyer and seller. (dual agent)

(Name of Seller's Agent and license number) \_\_\_\_\_  
is (check one):

is the Seller's Agent. (salesperson or broker associate)

is both the Buyer's and Seller's Agent. (dual agent)

\_\_\_\_\_  
is the broker of (check one):

No warranty or representation, express or implied, is made as to the accuracy of the information contained herein, and same is submitted subject to errors, omissions, change of price, rental or other conditions, withdrawal without notice, and to any special listing conditions, imposed by our principals.



the buyer; or

both the buyer and seller. (dual agent)

(Name of Buyer's Agent and license number) \_\_\_\_\_  
is (check one):

the Buyer's Agent. (salesperson or broker associate)

both the Buyer's and Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.  
**2079.19.**

The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.  
**2079.20.**

Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.  
**2079.21.**

(a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller.

(b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer.

(c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered.

(d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.  
**2079.22.**

Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.  
**2079.23.**

(a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.  
**2079.24.**

Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

**Attachment B**

**AGENCY CONFIRMATION**  
(per California Civil Code Section 2079.17)

**Property Address: 1190 West Tower Avenue, Building 11, Alameda CA** \_\_\_\_\_

**The following agency relationship(s) is/are hereby confirmed for this transaction:**

(Name of Seller's Agent, Brokerage firm and license number) Cushman & Wakefield (#00616335) is the broker of (check one):

- the seller; or
- both the buyer and the seller. (dual agent).

(Name of Seller's Agent and license number) \_\_\_\_\_ is (check one):

- the Seller's Agent. (salesperson or broker associate).
- both the Buyer's and Seller's Agent. (dual agent)

(Name of Buyer's Agent, Brokerage firm and license number) \_\_\_\_\_ is the broker of (check one):

- the buyer; or
- both the buyer and seller. (dual agent).

(Name of Buyer's Agent and license number) \_\_\_\_\_ is (check one):

- the Buyer's Agent. (salesperson or broker associate)
- both the Buyer's and Seller's Agent. (dual agent)

**Acknowledged:**

**Seller/Lessor:** \_\_\_\_\_ Date \_\_\_\_\_

**Buyer/Lessee:** \_\_\_\_\_ Date \_\_\_\_\_

**Seller/Lessor Agent** \_\_\_\_\_ DRE Lic. No. \_\_\_\_\_  
(Brokerage Firm)

By: \_\_\_\_\_ DRE Lic. No. \_\_\_\_\_  
Printed: \_\_\_\_\_ Date \_\_\_\_\_  
(Salesperson or Broker Associate)

**Buyer/Lessee Agent** \_\_\_\_\_ DRE Lic. No. \_\_\_\_\_  
(Brokerage Firm)

By: \_\_\_\_\_ DRE Lic. No. \_\_\_\_\_  
Printed: \_\_\_\_\_ Date \_\_\_\_\_  
(Salesperson or Broker Associate)

## **Attachment C**

### **REAL PROPERTY DISCLOSURES**

**Cushman & Wakefield (“Broker”)** provides this Real Property Disclosure Notice (“Notice”) in reference to a proposed transaction by and between **City of Alameda (“Lessor”)** and **Insert Name (“Lessee”)** regarding real property identified as: **1190 West Tower Avenue (Building #11)** in the City of **Alameda, California** (the **“Property”**).

#### **Hazardous Materials**

Comprehensive federal, state and local laws, regulations and ordinances (“Laws”) control the disclosure, use, storage, handling, removal and disposal of Hazardous Materials. The term “Hazardous Materials” includes, but is not limited to, underground storage tanks, petroleum, paint, solvents, lead, cyanide, DDT, inks, acids, pesticides, ammonium, asbestos, heavy metals, PCBs, and any contaminated, hazardous or toxic substance. Hazardous Materials may be present at the Property due to current or prior use, or the use of adjacent properties. Except as expressly stated in this paragraph, Broker and its agents have not made and will not make any analysis, investigation, representation or warranty with respect to any Hazardous Materials matters, including without limitation the presence or absence of Hazardous Materials on or impacting the Property. Broker recommends that you consult your advisors with respect to all Hazardous Materials matters.

#### **Americans with Disabilities Act**

The Americans with Disabilities Act (“ADA”) requires, among other things, that owners of “public accommodations” remove barriers to access by disabled persons, and provide auxiliary aids and services for hearing, vision or speech impaired persons. Any change of use or alterations of the Property may trigger such requirements, even if existing use is in compliance with the ADA. Except as expressly stated in this paragraph, Broker and its agents have not made and will not make any analysis, investigation, representation or warranty with respect to any ADA matters. Broker recommends that you consult your advisors with respect to all ADA matters.

#### **Natural Hazards – Sale Only**

Various Laws require a seller and its broker to disclose the existence of certain natural hazards to a buyer, including whether the property is located in an earthquake fault zone, a seismic hazard zone, a special flood hazard area, an area of potential flooding, a fire hazard severity zone, or a wildland fire area. If Broker represents the Seller, Broker will provide Buyer with a report prepared by an independent third party regarding such natural hazards during the due diligence period under the purchase contract.

#### **Commercial Property Owner’s Guide to Earthquake Safety – Sale Only**

The seller of a precast concrete or reinforced or unreinforced masonry building with wood frame floors or roof which was built before January 1, 1975 must deliver to the buyer a copy of “The Commercial Property Owner’s Guide to Earthquake Safety” published by the California Seismic Safety Commission. Buyer acknowledges that Seller and/or Broker have disclosed whether such requirement applies to this Property, and if so, that Broker has delivered to Buyer a copy of that Guide.

#### **Water Heater Bracing Disclosure and Certification – Sale Only**

Seller hereby certifies that all water heaters in or on the Property are braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motions as required by state and applicable local codes.

#### **Lead Based Paint Pamphlet – Sale or Lease of Residential Property**

The seller or lessor of any residential property built before 1978 must provide the buyer or lessee with a lead hazard information pamphlet, disclose the presence of any known lead-based paint and provide a statement to be signed by the buyer or lessee that the buyer or lessee has read the warning statement, has received the pamphlet, and has a 10-day opportunity to inspect before becoming obligated under the contract.

**Broker Disclaimer**

Broker has not made and will not make any analysis, investigation, representation or warranty regarding (a) the zoning of the Property or the legality of any present or future use of the Property; (b) the compliance of the Property with any Law; (c) the physical condition of the Property, including without limitation the structural, mechanical, or soils conditions of the Property or the presence or absence of wood-destroying organisms, mold, allergens, fungi, spores, pollens, insects or pests; (d) the financial condition or prospects of the Property or any of its tenants, including without limitation the accuracy or completeness of income and expense information and projections, or the intent or ability of any tenant to continue its tenancy; (d) the size, measurements or boundaries of the Property; or (e) pending or future action by any government or other entity or person that might impact the Property. Broker recommends that you consult your advisors with respect to each of these matters.

**Legal, Tax and Accounting Matters**

Broker and its agents are not qualified to provide legal, tax or accounting advice, and have not made and will not make any analysis, investigation, representation or warranty regarding any legal, tax or accounting matters. Broker recommends that you consult your advisors with respect to all legal, tax and accounting matters.

**Broker Multiple Representation**

Broker and its agents have a wide variety of clients, and may represent other buyers or lessees interested in the Property, or may represent other sellers or lessors with property similar to the Property. Buyer or Lessee understands and agrees that Broker and its agents may present multiple offers on the Property to the Seller or Lessor. Seller or Lessor understands and agrees that Broker and its agents may present multiple properties to the Buyer or Lessee.

**Non-Binding Proposal / Letter of Intent**

If this Disclosure Notice accompanies a proposal or Letter of Intent then it is a statement of the terms upon which the Buyer and Seller or Lessor and Lessee (the "Parties") may be interested in pursuing further negotiations concerning the Property, and is not intended to be a complete or binding agreement between the Parties. No binding agreements shall be created between the Parties until a full and final written agreement containing all material terms of the transaction is prepared, reviewed and approved by the Parties and their respective counsel, if any, and mutually executed and delivered.

Each Party acknowledges that it has incurred, and will incur, costs and expenses in connection with the transaction contemplated hereby, including but not limited to the costs of investigation and assessment of the economic and other merits of the proposal, as well as legal expenses in connection with the preparation of a final and binding agreement, all of which costs are incurred at such Party's sole cost and risk, and not in reliance upon any act or representations of the other Party or Broker. Either Party may terminate the negotiations at any time for any reason, or for no reason, without liability or obligation whatsoever.

CITY OF ALAMEDA RESOLUTION NO.  
15740

REQUIRING A PROJECT STABILIZATION AGREEMENT FOR  
CERTAIN CONSTRUCTION PROJECTS

WHEREAS, it furthers the interests of the City of Alameda ("City") to ensure that construction projects in the City are built safely, efficiently and timely; and

WHEREAS, the City has a proprietary interest to promote efficient construction of projects, invest City funds prudently in the construction of local projects and facilitate the timely and successful completion of local projects; and

WHEREAS, it is in the interest of the City and the public it serves for construction projects to proceed without labor disruptions that can cause delay, and to create an effective mechanism to minimize such disruptions in order to minimize project costs and timely complete projects; and

WHEREAS, the proprietary interests of the City will be advanced by avoiding labor disputes, misunderstandings or grievances on construction projects in the City through access to and use of dispute resolution procedures agreed upon in project stabilization agreements (each a "PSA") thus promoting cost efficient and timely project construction and completion; and

WHEREAS, the City objectives on construction projects will be advanced, and the proprietary interests of the City will be protected, by providing a consistent source of skilled construction workers and avoiding labor conflicts; and

WHEREAS, it is in the interest of the City to support advances in technologies, methods of design and construction, and project delivery methodologies that reduce cost and schedule, improve quality, and create safer conditions for workers and the public, alike; and

WHEREAS, PSAs advance the above described objectives; and

WHEREAS, PSAs have been used successfully on a variety of large and small development projects in the region, including the retrofitting and remodeling of existing buildings and facilities; and

WHEREAS, the use of negotiated PSAs can effectuate the City's objective of completing proprietary construction projects consistent with the goals and purposes described above.

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Alameda, the City shall require as a condition of approval of each construction project that fits into one of the categories described below, that the applicant, owner or developer, together with its contractors, have negotiated in good faith, including by proposing to the other party

reasonable and customary PSA terms and conditions, and have entered into a PSA with the Building and Construction Trades Council of Alameda County ("BTC"), consistent with the criteria enumerated below; however, this Resolution shall not apply to any project for which the City has executed an ENA or a DA/DOA with the approved developer prior to the date of adoption of this Resolution.

The City Council may, upon majority vote, suspend application of this Resolution to any construction project or part of any construction project involving specific portions and types of work.

The construction projects for which a PSA is to be negotiated include any of the following:

1. A construction project on a parcel owned by the City and leased to a tenant where either:
  - a. the City's Qualified Shell Improvement Credit ("OSI"), as defined below, exceeds five million dollars (\$5,000,000); the initial term of the lease is at least seven (7) years; and the tenant is a for-profit entity; or
  - b. the City's Qualified Shell Improvement Credit ("QSI"), as defined below, exceeds seven and a half million dollars (\$7,500,000); the initial term of the lease is at least seven (7) years; and the tenant is a not-for-profit entity.

For purposes of this construction project category, OSI means the total value of the improvements or alterations that a tenant of a City owned building is contractually required to perform on the building, for which the tenant is generally given a rent credit approximately equal to the total value of such improvements or alterations.

2. An affordable housing construction project on a parcel owned by the City or conveyed to a non-profit affordable housing developer by the City, of any cost and regardless of funding source, where the project satisfies the criteria set forth in the Alameda County Measure A1 Housing Bond Implementation Policies (as they may be amended from time-to-time), including the threshold number of units requiring the use of a project labor agreement.
3. A construction project that includes a parcel sold or conveyed by the City where the City and the applicant, owner or developer are entering into a development agreement ("DA"), disposition and development agreement ("ODA") or other agreement required by the DA or ODA ("Ancillary Agreement") and the estimated total project cost as contemplated in the DA, DOA or Ancillary Agreement exceeds five million dollars (\$5,000,000).
4. A construction project that does not fit into categories 1-3 above and that is receiving either a direct contribution of funds from the City or a credit or other non-monetary subsidy from the City, which funds, credit or subsidy will be applied by

the applicant, owner or developer to particular project costs as described in the DA, DOA or Ancillary Agreement, where the total funds, credit, or subsidy provided by the City is in excess of five million dollars (\$5,000,000).

BE IT FURTHER RESOLVED, that each PSA shall apply to all work covered under the Master Labor Agreements of the craft unions affiliated with BTC (collectively, "Unions");

BE IT FURTHER RESOLVED, that the parties should, in good faith, negotiate a PSA that:

Eliminates strikes and lockouts and replaces them with an expedited method to fairly, amicably and efficiently resolve grievances and disputes regarding labor conditions and alleged breaches of the PSA;

Respects the terms of the Master Labor Agreement of the applicable Unions; Promotes the hiring of Veterans under the "Helmets to Hardhats" or similar programs;

Encourages the employment of Alameda residents through the Alameda Point Collaborative Workforce Development Program, AUSD or similar programs that promote the use of apprentices;

Encourages the hiring of woman-owned, minority-owned, small local, and disadvantaged businesses;

Allows for composite crews, where appropriate, consistent with the Building Trades Jurisdictional Dispute Resolution procedure;

Respects the legitimate requirements of developers and contractors to manage projects and use new technologies, design and construction methods, types and sourcing of materials and equipment;

Ensures the prime contractor and all contractors and subcontractors are signatories to the Master Labor Agreement of the applicable Union;

Ensures the use of Union hiring halls as the primary source to satisfy all project craft needs consistent with standard referral procedures, unless otherwise negotiated;

Promotes the use of apprentices, where feasible and safe;

Includes effective procedures for health and drug testing to protect workers and the public; and

Prohibits discrimination based on race, national origin, religion, gender, sexual orientation or political affiliation.

Contains Management's Rights provisions substantially similar to the attached sample. (Attachment 1)

BE IT FURTHER RESOLVED, that each PSA shall apply for the duration of the construction work on the project, but shall not apply to operations and maintenance work performed by other workers, contractors or a tenant's employees at the facility, as further defined as part of the PSA negotiation process;

BE IT FURTHER RESOLVED, that any modifications regarding the terms or applicability of this resolution must be approved by a vote of City Council;

BE IT FURTHER RESOLVED, that if any provision of this resolution or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the invalidity will not affect other provisions or applications of this resolution that remain effective without the invalid provision or application, and to that end the provisions of this resolution are severable; and



Attachment 1 - Sample Management's Rights Section

**MANAGEMENT'S RIGHTS**

The Contractor retains full and exclusive authority for the management of its operations. Except as expressly limited by other provisions of this Agreement and the appropriate collective bargaining agreement listed on Schedule \_\_\_\_, the Contractor retains the right to direct the working force, including the hiring, promotion, transfer, discipline or discharge of its employees; the selection of foremen; the assignment and scheduling of work; and, the requirement of overtime work and the determination of when it shall be worked. No rules, customs, or practices which limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction.

Except as otherwise stated in the appropriate collective bargaining agreement listed on Schedule \_\_\_\_\_, there shall be no limitation or restriction upon the Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and installation of equipment, machinery, package units, precast, prefabricated, prefinished, or preassembled materials, tools, or other labor saving devices. The Contractor may without restriction install or otherwise use materials, supplies or equipment regardless of their source. The on-site installation of plication of such items shall be performed by the craft customarily having jurisdiction over such work under the applicable collective bargaining agreement listed on Schedule \_\_\_\_; provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, checkout or testing of specialized or unusual equipment or facilities.

Except as otherwise stated in the appropriate collective bargaining agreement listed on Schedule \_\_\_\_, it is recognized that the use of new technology, equipment, machinery, tools and/or labor savings devices and methods of performing work will be initiated by the Contractor from time to time during the project. The Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to arbitrate the dispute as set forth in the appropriate section of this Agreement.

The failure of the Contractor to exercise rights herein reserved to it or the exercise of those rights in a particular way shall not be deemed a waiver of said rights or of the Contractor's right to exercise said rights in some other manner not in conflict with the terms of this Agreement.

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 2<sup>nd</sup> day of February 2021, by the following vote to wit:

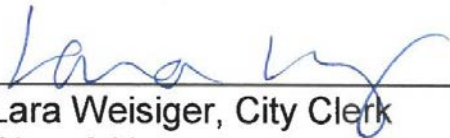
AYES: Councilmembers Knox White, Vella and Mayor  
Ezzy Ashcraft - 3.

NOES: Councilmembers Daysog and Herrera Spencer - 2.

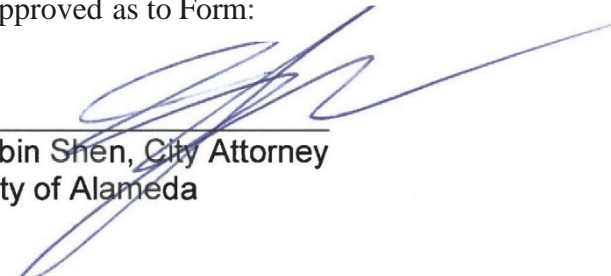
ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 3<sup>rd</sup> day of February 2021.

  
\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

Approved as to Form:

  
\_\_\_\_\_  
Yibin Shen, City Attorney  
City of Alameda