

Master Contract No. **xxxx**

**AGREEMENT BY AND BETWEEN
THE COUNTY OF ALAMEDA
AND
CITY OF *name*
FOR HOMELESS EMERGENCY AID PROGRAM (HEAP) SERVICES**

THIS AGREEMENT is made and entered into this 22nd day of February 2019, by and between the County of Alameda (hereinafter referred to as "County"), and the City of *Name*, located in the County of Alameda, State of California, (hereafter referred to as "City").

WHEREAS, the County has entered into a Grant Agreement with the State of California, Homeless Coordinating and Financing Council (HCFC) for the Homeless Emergency Aid Program (HEAP) under Senate Bill 850 ("HEAP Grant Agreement"), which provides one-time flexible block grant funds to be used to address the immediate needs of homeless individuals and individuals at imminent risk of homelessness; and

WHEREAS, the County has allocated HEAP funds to the City based on the allocation formula adopted by the Board of Supervisors on November 20, 2018 and the City's declaration of a Shelter Crisis (declared *date, 2018*); and

WHEREAS, the County and City have agreed that the City will provide matching funds as specified herein; and

WHEREAS, the activities of the City under this Agreement with the County shall be governed by the conditions of the HEAP Grant Agreement; and

WHEREAS, the Parties have reviewed City's proposed projects and have determined that the projects are HEAP-eligible projects in accordance with SB 850 regulations and the conditions of the HEAP Grant Agreement;

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE PROMISES
HEREINAFTER MADE, COUNTY AND CITY DO MUTUALLY AGREE AS FOLLOWS:

I. STATEMENT OF WORK AND COMPENSATION

- A. City shall perform or arrange for the performance of the work under this Agreement in the manner and time provided herein and in accordance with: the budget; the scope of work and any specifications and drawings; and all related documents and provisions attached hereto as Exhibit A and B, incorporated herein by reference.
- B. The maximum amount of HEAP funds allocated to City pursuant to this Agreement to perform the work described in Exhibit A is *\$insert*. The City must adhere to commitment and expenditure deadlines as stated in Exhibit A; failure to do so may result in a reduction in the City allocation. In the event that the HCFC reduces the HEAP allocation, the City's allocation will be reduced proportionately.
- C. City shall provide *\$insert* in matching funds (30%) for Fiscal Year 2019-2020. Match funds must fund activities which support those who are homeless or at-risk

of homelessness.

II. COMMENCEMENT AND COMPLETION REQUIREMENTS

- A. This Agreement shall start on February 22, 2019 and be in effect until June 30, 2021 or until all HEAP funds allocated to City are disbursed to and expended by City, or for the duration of any regulatory agreement or contract executed in conjunction with a project financed with HEAP funds provided under this Agreement, or when all of the contract terms have been completed, whichever shall first occur.
- B. It shall be the responsibility of the City to coordinate and schedule the work to be performed so that commencement and completion will take place in accordance with the provisions of this Agreement. City shall use its best efforts to expend 100 percent of all funds allocated to it under this Agreement by March 31, 2021, the local expenditure deadline. The County will actively monitor City expenditures on a monthly basis. The County does not intend to, but may extend the time for completion of the work to be performed under this Agreement in writing. Such extensions may be made in exceptional circumstances where City has made substantial progress in carrying out the programs and expending the majority of funds or when delay in the progress of work is not attributable to the negligence of the City and that such delay was due to causes beyond the control of the City. An extension will only be available if it will not cause the County to be out of compliance with HEAP rules and regulations for timely commitment and expenditure of funds.
- C. Any time extension granted to the City to enable the City to complete the work shall not constitute a waiver of rights the County may have under this Agreement.
- D. Should the City not complete the work by the scheduled date or by an extended date, granted by the County in writing, pursuant to previously stated conditions, the County shall be released from all conditions of this Agreement.
- E. Upon completion of performance under this Agreement and a determination of final costs, City shall submit to the County a certificate of completion for construction projects and a requisition for final payment for service projects, unless otherwise provided in this Agreement.
- F. As a part of this Agreement, City will provide the County with the Certificate(s) of Insurance as outlined in Exhibit C.

III. HEAP PROGRAM REQUIREMENTS

- A. City's activities and expenditures pursuant to this Agreement shall be in compliance with the HEAP Grant Agreement (dated February 6, 2019 and incorporated herein by this reference) and with Chapter 5 (beginning with Section 50210) of Part 1 of Division 31 of the Health and Safety Code, and all other relevant provisions established under SB 850 (Chapter 48, Statutes of 2018) ("HEAP Statute").
- B. City's expenditures pursuant to this Agreement shall be for one-time uses that

address immediate homelessness challenges.

- C. City shall comply with all applicable federal and state laws, rules and regulations.
- D. City shall perform work pursuant to this Agreement in accordance with federal, state and local housing and building codes, as applicable.
- E. City shall maintain, as required by law, unemployment insurance, disability insurance, and liability insurance in an amount that is reasonable to compensate any person, firm or corporation who may be injured or damaged by the City or any of its subcontractors in performing the work funded by this Agreement or any part of it.
- F. City shall provide information reasonably requested by County in order to fulfill its audit and reporting requirements pursuant to the HEAP Grant Agreement, including the information required in Exhibit C, Paragraph 5 of the HEAP Grant Agreement.
- G. In the event that HCFC terminates the Grant Agreement, this Agreement shall terminate and any unexpended funds shall be returned to County within 30 days of the written notice thereof.

IV. SUBCONTRACTS

- A. Any subcontract funded under this Agreement shall be subject to the terms and conditions of this Agreement. Contractor shall inform County in writing of any subcontracts entered into with these funds, the amount, the scope of work, any other information the County may from time to time require.
- B. City shall include all the terms of the HEAP Grant Agreement in each subcontract.

V. BUDGET

- A. Any requested modification to the Budget attached to this Agreement and incorporated as part of this Agreement, shall be reviewed and approved by the Alameda County Housing & Community Development Director on behalf of the County. Approval is contingent upon authorization from HCFC. Any budget modifications require the prior written approval of Alameda County Housing & Community Development Director on behalf of the County. Budget modifications shall not alter: 1) The basic scope of services (Exhibit A) required to be performed under this Agreement; 2) the time period for the services to be performed under this Agreement; and, 3) the total amount of the authorized budget of this Agreement (Exhibit A), subject to future amendments as approved by the Alameda County Housing Director.

VI. RECORDS AND REPORTS

- A. The City shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other

evidence or information as the County may request with regard to any such expenditure or disbursement charged by the City to monitor City's compliance with the requirements of HEAP or this Agreement.

- B. Records must be kept accurate and up-to-date. Failure of City to comply with this provision could result in termination of this Agreement or City's repayment of funds previously awarded under this Agreement. Records must be retained for at least five years following the termination or expiration of this Agreement.
- C. City will also permit access to all books, accounts, or records of any kind to County or to any other governmental entity for purposes of audit. HEAP administrative funds may be used for the performance of a financial audit.

VII. PROGRAM MONITORING AND EVALUATION

- A. City shall be monitored and evaluated in terms of its effectiveness and timely compliance with the provisions of this Agreement, State HEAP regulations, and conditions of the Grant Agreement between the County and State and the effective and efficient achievement of the Program Objectives.
- B. City shall undertake continuous quantitative and qualitative evaluation of the scope of services as specified in this Agreement and shall make monthly and annual written reports to County.
 - 1. The monthly written reports shall be submitted in the format approved and distributed by the County.
 - 2. The monthly report shall be due on the fifteenth day of the month immediately following the report month, except for the end of the program year report which is due within thirty days.
 - 3. Performance Measures – City shall provide data inputted and extracted from the Homeless Management Information System (HMIS) by project type (example: Rapid Re-housing, Homeless Prevention, Services), including but not limited to:
 - a. Number of instances of service (as defined in the September 5, 2018 HEAP NOFA, available at https://www.bcsd.ca.gov/hcfc/documents/heap_nofa.pdf, and incorporated herein by this reference), which “means each encounter with a member of the target population where services are provided for each of the eligible grant activities. For example, one individual checks into a warming center operated by Provider X on Tuesday. The same individual checks into the same warming center the next night. This counts at two instances of service for this activity.”
 - b. Number of unsheltered homeless persons becoming sheltered.
 - c. Number of homeless persons entering permanent housing.
 - 4. Beneficiaries – City shall provide an HMIS “Annual Performance Report

(APR)” report for the duration of the monthly period, reflecting the unduplicated total of persons-served (including homeless persons or persons at imminent risk of homelessness served). APR shall be extracted from the County’s HMIS and shall not exceed 5% of null values in Questions 6a-f of the APR (Data Quality Sections). APRs must be submitted for each individual project type (i.e. Rapid Re-housing, Homeless Prevention, or relevant project)

5. Annual Report – City shall contribute qualitative and quantitative data to be incorporated into the Countywide HEAP Final Report submission, in the format approved and distributed by the County.
- C. The County shall have ultimate responsibility for project monitoring oversight and evaluation, to assist City in complying with the scope and contents of this Agreement, and to provide management information which will assist the County's policy and decision-making efforts towards addressing homelessness within the County.

VIII. RELIGIOUS ACTIVITY PROHIBITION

City may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing, as a part of the program or services funded by this Agreement.

IX. REVERSION OF ASSETS

- A. Upon the expiration of this Agreement, City shall transfer to County any HEAP funds on hand at time of expiration and any accounts receivable attributable to the use of HEAP funds.

X. TERMINATION OF THIS AGREEMENT

County may terminate this Agreement in whole or in part immediately for cause, which shall include as example but not as a limitation:

- A. Failure, for any reason, of City to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with City, State and Federal laws and regulations and applicable directives;
- B. Failure to meet the performance standards contained in other sections of this Agreement;
- C. Improper use or reporting of funds provided under this Agreement; and
- D. Suspension or termination by the State of the HEAP grant to the County under which Agreement is made, or the portion thereof delegated by this Agreement.
- E. Any and all notices, writings, correspondences, etc., as required by this Agreement shall be directed to the City and County as follows:

City
City Manager
City of *Name*
Insert
Name, CA 94XXX

County
Director
Alameda County HCD
224 W. Winton Avenue, Room 108
Hayward, CA 94544

XI. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, City shall hold harmless, defend and indemnify the County, its Board of Supervisors, officers, employees and agents (collectively "Indemnitees") from and against any and all claims, losses, damages, liabilities or expenses, including reasonable attorney fees, incurred in the defense thereof, for the death or injury to any person or persons (including employees of City or County) or damage of any property (including property of City or County) which arises out of or is in any way connected with performance of this agreement (collectively "Liabilities") except where such Liabilities are proximately caused solely by the negligence or willful misconduct of any Indemnitee.

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

* * * * *

CITY OF *NAME*

COUNTY OF ALAMEDA

Approved as to form:

Approved as to form: Donna R. Ziegler
County Counsel

By: _____
City Attorney

By: _____
Heather M. Littlejohn
Deputy County Counsel

Date: _____

Date: _____

By: _____
insert City Manager

By: _____
President, Board of Supervisors

Attest: _____
City Clerk

Date: _____

Date: _____

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

Master Contract No. xxxx

AGREEMENT BY AND BETWEEN
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EXHIBIT A

Statement of Work:

- I. The purpose of the HEAP funds is to provide one-time block grant funding to address the immediate needs of homeless individuals and individuals at imminent risk of homelessness in the service area.
 - a. "Homeless," as defined in Section 578.3 of Title 24 of the Code of Federal Regulations.
- II. Eligible uses of these funds are those established by the HEAP Statute, which include the following:
 - a. **Services:** Street outreach, health and safety education, criminal justice diversion programs, prevention services, navigation services, and operating support for short-term or comprehensive homeless services.
 - b. **Rental assistance or subsidies:** Housing vouchers, rapid re-housing programs, and eviction prevention strategies.
 - c. **Capital improvements:** Emergency shelter, transitional housing, drop-in centers, permanent supportive housing, small/tiny houses, and improvements to current structures that serve homeless individuals and families. Some communities are discussing solutions to address homelessness and the public health crisis by using funds for handwashing stations or public toilet and shower facilities.
- III. Any housing-related activities funded with HEAP funds, including but not limited to, emergency shelter, rapid re-housing, rental assistance, transitional housing and permanent supportive housing must be in compliance or otherwise aligned with the Core Components of Housing First, pursuant to Welfare and Institution Code Section 8255(b).
- IV. All HEAP funds provided under this Agreement must be expended by March 31, 2021.
 - a. Expended means the funds have been fully paid and receipted, and no invoices remain outstanding.
 - b. Funds not expended by this deadline must be returned to the County within 15 days and City's funds available pursuant to this Agreement will be reduced accordingly, unless substantial progress has been made towards the usage of funds. Approval must be granted by the County HCD Director.
 - c. The County will monitor expenditures on a monthly basis, to ensure all jurisdictional HEAP funds are expended by March 31, 2021, which ensures utilization of full funds by the State deadline of June 30, 2021.
 - d. **Expenditure Oversight**
 - i. 60% of HEAP funds must be expended by July 1, 2020.
 - ii. 80% of HEAP funds must be expended by December 1, 2020.

- V. Restrictions on Use of HEAP Funds
- a. Funds provided under this Agreement may not be used for expenditures made prior to February 22, 2019.
 - b. Funds provided under this Agreement shall not be used for costs associated with activities in violation of any law or for any activities not consistent with the intent of HEAP and the eligible uses identified in Section 50214 of the HEAP Statute.
 - c. If City uses funds provided under this Agreement to pay for ineligible activities, as determined by County or by HCFC, or City shall reimburse these funds to County or HCFC, as directed.
 - d. Funds provided under this Agreement shall not be used for overhead or planning activities, including Homeless Management Information Systems or Homelessness Plans.

- VI. City shall *insert*

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EXHIBIT B
PAYMENT TERMS

1. City's expenditures shall be in accordance with the chart set forth below. The funds provided by this Agreement may be fully or partially expended by City within the first year of the Agreement term.

| HEAP FUNDS | | Match 30% Limited to FY19-20 funds |
|------------------------------------|------------------|---|
| Services | | \$xxx,xxx |
| <i>summary</i> | \$xxx,xxx | |
| | | |
| Rental Assistance | | |
| <i>summary</i> | \$xxx,xxx | |
| Administration | | |
| <i>summary</i> | \$xxx,xxx | |
| TOTAL - CITY OF <i>name</i> | \$xxx,xxx | |
| | | |

2. Invoices shall be reviewed by the liaison assigned to monitor this contract and shall be approved by the Community Development Agency's Director of the Housing and Community Development Department or the Director's designee. County will use its best efforts to make payment to City upon successful completion and acceptance of the services listed within thirty (30) days upon receipt and approval of invoice. City-matching expenses shall be paid by City-specified sources through FY19/20.
3. Total payment by the County to the City under the terms of this Agreement will not exceed the total amount of **\$insert**. This cost includes all taxes and all other charges.
4. Upon award of this Agreement by County, County and City shall forthwith jointly create a schedule governing the timely performance of City's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter City shall perform all services under this Agreement in conformance with the schedule.

5. To receive payment for the items specified above, City shall submit invoices to the COUNTY on a monthly basis with supporting documentation of actual costs incurred. Invoices should be received within 30 days of the end of each claim month. Requests received after 30 days may be delayed in processing.
6. Any adjustments made by the fiscal auditors at the year-end audit, under the AICPA guidelines and other relevant federal regulations should be brought to the attention of the COUNTY for staff reconciliation. Once the line item budget as shown in the chart above has been approved through the execution of the Contract, there can be no more than four (4) requests of adjustments to budget line item amounts during the contract period, including any final adjustments done at the end of the program year unless approved by the Community Development Agency's Director of the Housing and Community Development Department or the Director's designee.

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

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

| TYPE OF INSURANCE COVERAGES | | MINIMUM LIMITS |
|-----------------------------|--|---|
| A | Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability | \$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage |
| B | Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities | \$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage |
| C | Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees | WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease |
| D | Endorsements and Conditions: <ol style="list-style-type: none"> ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG20 38 04 13. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as the ISO Form named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured." CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The require certificate(s) and endorsements must be sent as set forth in the Notice provision. | |

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