

**BELOW MARKET RATE (BMR) AFFORDABLE HOUSING FUND (AHF)
CITY/NON-PROFIT CONTRACT
(Services Only)**

This Below Market Rate (BMR) Affordable Housing Fund (AHF) City/Non-Profit Contract (the "Contract") is entered into between the **CITY OF CUPERTINO**, a political subdivision of the State of California ("CITY"), and **[NAME]**, a non-profit public benefit corporation (the "CORPORATION"). The allocation of funds pursuant to this Contract will be a grant. CITY approved the allocation and disbursement of Below Market Rate ("BMR") Affordable Housing Funds ("AHF") funds to CORPORATION on **[DATE]**.

WITNESSETH

WHEREAS, CITY has reserved a portion of its BMR AHF funds to be used on activities that benefit Cupertino's residents; and,

WHEREAS, CITY has agreed to the use by CORPORATION of a portion of CITY'S BMR AHF funds for the Program (as described below) to be operated within the City for the benefit of low and very low-income households;

NOW, THEREFORE, the parties agree as follows:

I. Program

CITY agrees to allocate a portion of its current BMR AHF funds to CORPORATION, in the sum of **[DOLLARS (\$____)]** (the "Grant") for the purpose of implementing the CORPORATION'S program, as more particularly described in Exhibits A-E to the Contract (the "Program"), and said Exhibits set forth below, as they may be amended or modified, are attached to this Contract and incorporated herein by reference.

Exhibit A: Program Description

Exhibit B: Program Work Plan

Exhibit C: Proposed Implementation Timeline Schedule

Exhibit D: Program Budget

Exhibit E: Basic Insurance and Bond Requirements For Non-Profit Contracts

II. TERM

A. The purpose of this Contract is for the CITY to disburse the Grant for eligible activities.

B. The term of this Contract (the "Term") will begin on **[DATE]** and will end on **[DATE]**, unless otherwise amended or terminated earlier pursuant to Section VII or Section VIII of this Contract.

III. SECOND YEAR RENEWAL OPTIONS

The term of this Contract may be extended by an amendment to this Contract authorized by City Council for the fiscal year subsequent to the initial term of this Contract, contingent on the following requirements and process:

- A. Authorization by CITY to expend funds for the purposes of this Contract;
- B. CITY'S appropriation of BMR AHF funds for this Program;
- C. CORPORATION'S satisfactory performance, as determined in the CITY's sole discretion, of all its obligations as stated in this Contract;
- D. Submission to CITY of current proof of insurance satisfying the requirements set forth in Exhibit E.

IV. OBLIGATIONS OF CORPORATION

- A. Organization of CORPORATION. CORPORATION shall:
 - 1. Provide CITY with copies of the following documents, evidencing filing with the appropriate governmental agency:
 - a) Its Articles of Incorporation under the laws of the State of California;
 - b) A copy of the current Bylaws of CORPORATION;
 - c) Documentation of its Internal Revenue Service non-profit status;
 - d) Names and addresses of the current Board of Directors of CORPORATION; and,
 - e) An adopted copy of CORPORATION'S personnel policies and procedures.
 - 2. During the Contract Term, immediately report any changes, subsequent to the date of this Contract, in CORPORATION'S Articles of Incorporation, Bylaws, Board of Directors, personnel policies and procedures, or tax exempt status to CITY.
 - 3. Maintain no member of its Board of Directors as a paid employee, agent, independent contractor, or subcontractor under this Contract.
 - 4. Open to the public meetings of its Board of Directors, if required by California's open meeting laws, except meetings, or portions thereof, dealing with personnel or litigation matters or as otherwise provided by law.

5. Keep minutes of all its regular and special meetings.
6. Comply with all provisions of California and Federal Non-Profit Corporation Laws.
7. Provide to the CITY a copy of a resolution authorizing the CORPORATION's execution of this Contract. The CORPORATION hereby warrants to the CITY that this Contract is a legal, valid, and binding obligation of the CORPORATION enforceable in accordance with its terms, and that the execution and delivery of this Contract and the performance of the CORPORATION's obligations have been duly authorized by the CORPORATION.

B. Program Performance by CORPORATION. CORPORATION shall:

1. Conduct the Program within the City of Cupertino, for the purpose of benefiting low and very low-income households.
2. File quarterly reports on the type and number of services rendered through the operation of the Program, and a description of the beneficiaries of these services, and which reports will evaluate the manner in which the Program is achieving its objectives and goals according to the standards established by CITY. The progress reports will be due ten (10) days after the close of each reporting period and must cover the three (3) months immediately preceding the date on which the report is filed.
3. Coordinate its services with other existing organizations providing similar services in order to foster community cooperation and to avoid unnecessary duplication of services.
4. Seek out and apply for other sources of revenue in support of its operation or services from local, state, federal and private sources and, in the event of receipt of such award, inform CITY within ten (10) days.
5. Include an acknowledgement of CITY funding and support on CORPORATION stationery and on all appropriate program-related publicity and publications using words to the effect: "funded in whole or in part by the City of Cupertino General Funds."

C. Fiscal Responsibilities of CORPORATION. CORPORATION shall:

1. Appoint and submit the name of a fiscal agent who will be responsible for the financial and accounting activities of CORPORATION, including the receipt and disbursement of CORPORATION funds. The CITY must immediately be notified in writing of the appointment of any new fiscal agent and that agent's name.
2. If the Term of this Contract is extended by an amendment for a second fiscal year, submit a satisfactory audit within one hundred fifty (150) days of CORPORATION's

fiscal year encompassed by the first year of this Contract.

3. Document all Program costs by maintaining records in accordance with Section IV, Paragraph D below.

4. Submit to the CITY, based on an agreed upon schedule, a request for payment, together with all supporting documentation. Invoices requesting disbursements submitted after the expiration of the Contract will be honored only for eligible charges incurred during the Contract Term. All invoices must be submitted by the Contract expiration date or within such other time period specified by the CITY for this Contract Term. Funds not disbursed will be returned to the City for future reallocation.

5. Certify current and continuous insurance coverage, subject to CITY approval and in accordance with requirements as outlined in Exhibit E and provide a current insurance certificate evidencing such coverage.

6. Deliver to the CITY a copy of the resolution authorizing CORPORATION's execution of this Contract.

7. Items 4 through 6 above are express conditions precedent to disbursement of any CITY funding and failure to comply with these conditions will, at discretion of CITY, result in suspension of funding or termination of this Contract.

8. If CORPORATION does not use the Grant funds in accordance with the requirements of this Contract, CORPORATION is liable for repayment of all disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. CORPORATION is required to respond to any adverse findings, which may lead to disallowed costs subject to provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations."

D. Establishment and Maintenance of Records. CORPORATION shall:

1. Maintain complete and accurate records of all its transactions including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, client statistical records, personnel, property and all other pertinent records sufficient to reflect properly (a) all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred to perform this Contract or to operate the Program, and (b) all other matters covered by this Contract.

2. Maintain client data demonstrating client eligibility for services provided in connection with the Program. Such data will include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information will be made available to CITY monitors for review upon request.

E. Preservation of Records. CORPORATION will preserve and make available its records:

1. Until five (5) years following date of final payment under this Contract, or
2. For such longer period, if any, as is required by applicable law; or
3. If this Contract is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five (5) years from the date of termination.

F. Examination of Records and Facilities. At any time during normal business hours, and as often as may be deemed necessary, CORPORATION agrees that the CITY, and/or any duly authorized representatives may until expiration of the later of: (a) five (5) years after final payment under this Contract, (b) five (5) years from the date of termination of this Contract, or (c) such longer period as may be described by applicable law, have access to and the right to examine its plants, offices and facilities used in the performance of this Contract or the operation of the Program, and all its records with respect to the Program and all matters covered by this Contract. CORPORATION also agrees that CITY or any duly authorized representatives will have the right to audit, examine, and make excerpts or transactions of and from, such records and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to the Program and matters covered by this Contract. CORPORATION will be notified in advance that an audit will be conducted. CORPORATION will be required to respond to any audit findings, and have the responses included in the final audit report. The cost of any such audit will be borne by CITY.

G. Compliance with Law. CORPORATION will become familiar and comply with and cause all its subcontractors, independent contractors, and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

H. Suspension and Termination. If CORPORATION materially fails to comply with any term of this Contract, CITY may suspend or terminate the Contract in whole or in part. In no event shall any payment by CITY hereunder constitute a waiver by CITY of any breach of this Contract or any default, which may then exist on the part of CORPORATION, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach or default. CITY expressly reserves the right to demand of CORPORATION the repayment to the CITY of any funds disbursed to CORPORATION under this Contract, which were not expended in accordance with the terms of this Contract, and CORPORATION agrees to promptly refund any such funds upon demand.

Notwithstanding the above, CORPORATION shall not be relieved of liability to CITY for damages sustained by CITY or others by virtue of any breach of the Contract by CORPORATION, and CITY may withhold any payments to the CORPORATION for the purpose of set off until such time as the exact amount of damages due CITY from CORPORATION is determined.

I. Reversion of Assets. Upon expiration or termination of this Contract, the CORPORATION will transfer to the CITY any Grant funds on hand at the time of expiration and any accounts receivable attributable to the use of such funds.

J. Conflict of Interest. In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 et seq., except for approved eligible administrative or personnel costs, no person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the CITY who exercises or has exercised any functions or responsibilities with respect to the activities funded by this Contract or who is in a position to participate in a decision-making process may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, during, or at any time after, such person's tenure. CORPORATION shall exercise due diligence to ensure that the prohibition in this Section is followed.

Further, no person who is a director, officer, partner, trustee or employee or consultant of CORPORATION, or immediate family member of any of the preceding, shall make or participate in a decision, made by the CITY or a CITY board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or CORPORATION.

Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 et seq., its implementing regulations manual and codes, and Government Code Section 1090.

V. OBLIGATIONS OF CITY

A. Method of Payment. During the Term of this Contract, CITY shall disburse the BMR AHF Grant funds to CORPORATION on a reimbursement basis unless otherwise provided herein for all allowable costs and expenses incurred in connection with the Program, not to exceed the total sum set forth in Article I. CITY may, at any time in its absolute discretion, elect to suspend or terminate payment to CORPORATION, in whole or in part, pursuant to this Contract based on CORPORATION'S non-compliance, including, but not limited to, incomplete documentation of expenses, failure to substantially meet goals and objectives as required in Exhibit B ("Program Work Plan"), failure to submit adequate progress reports as required herein or other incidents of non-compliance as described in Section VII, Paragraph B of this Contract or based on the refusal by CORPORATION to accept any additional conditions that may be imposed by City at any time to ensure compliance with the terms of this Contract.

VI. PROGRAM COORDINATION

A. CITY. The CITY has designated the Senior Housing Planner for CITY who will render overall supervision of the progress and performance of this Contract by CITY.

B. CORPORATION. As of the date hereof, CORPORATION has designated [NAME] to serve as EXECUTIVE DIRECTOR and to assume overall responsibility for the

progress and execution of this Contract. The CITY will be immediately notified in writing of the appointment of a new EXECUTIVE DIRECTOR.

C. NOTICES. All notices or other correspondence required or contemplated by this Contract shall be sent to the parties at the following addresses:

CITY: Attention: Senior Housing Planner
 Community Development Department
 City of Cupertino
 10300 Torre Avenue
 Cupertino, CA 95014

CORPORATION: **[ADDRESS]**

All notices will either be hand delivered or sent by United States mail, registered or certified, postage prepaid. Notices given in such a manner will be deemed received when hand delivered or seventy-two (72) hours after deposit in the United States mail. Any party may change his or her address for the purpose of this section by giving five days written notice of such change to the other party in the manner provided in this section.

VII. CONTRACT COMPLIANCE

A. Monitoring and Evaluation of Services. Evaluation and monitoring of the Program performance is the mutual responsibility of both CITY and CORPORATION. CORPORATION must furnish all data, statements, records, information and reports necessary for DIRECTOR to monitor, review and evaluate the performance of the Program and its components. CITY will have the right to request the services of an outside agent to assist in any such evaluation. Such services shall be paid for by CITY.

B. Contract Noncompliance. If CORPORATION fails to comply with any provision of this Contract; CITY will have the right to require corrective action to enforce compliance with such provision as well as the right to suspend or terminate this Contract. Examples of noncompliance include, but are not limited to:

1. If CORPORATION (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to CITY in connection with the Program.

2. If there is pending litigation with respect to the performance by CORPORATION if any of its duties or obligations under this Contract, which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Program.

3. If CORPORATION has taken any action pertaining to the Program, which action required CITY approval, and such approval was not obtained.

4. If CORPORATION is in default under any provision of this Contract.
5. If CORPORATION makes illegal use of CITY funds.
6. If CORPORATION submits to CITY any report which is incorrect or incomplete in any material respect.
7. If CORPORATION fails to meet the stated objectives in the Program Work Plan attached as Exhibit B.

C. Corrective Action Procedure. CITY, in its absolute discretion and in lieu of immediately terminating this Contract upon occurrence or discovery of noncompliance by CORPORATION pursuant to this Contract, will have the right to give CORPORATION notice of CITY'S intention to consider corrective action to enforce compliance. Such notice must indicate the nature of the non-compliance and the procedure whereby CORPORATION will have the opportunity to participate in formulating any corrective action recommendation. CITY will have the right to require the presence of CORPORATION'S officer(s) and EXECUTIVE DIRECTOR at any hearing or meeting called for the purpose of considering corrective action.

In the event that CORPORATION does not implement the corrective action recommendations in accordance with the corrective action timetable, CITY may suspend payments hereunder or terminate this Contract as set forth in Section VIII below.

VIII. TERMINATION

A. Termination for Cause. CITY may terminate this Contract by providing written notice to CORPORATION, for any of the following reasons: uncorrected Contract non-compliance as defined in Section VII, Paragraph B; CORPORATION is insolvent or in bankruptcy or receivership; a member of the CORPORATION'S Board of Directors or the executive director is found to have committed fraud or; there is reliable evidence that CORPORATION is unable to complete the Program as described in the attached Exhibits. The date of termination will be as specified in the notice.

B. Termination for Convenience. In addition to the CITY'S right to terminate for cause set forth in Section VII, either CITY or CORPORATION may suspend or terminate this Contract for any reason by giving thirty (30) days prior written notice to the other party. Upon receipt of such notice, performance of the services hereunder will be immediately discontinued.

C. In the event that this Contract is terminated, CORPORATON may be required to return funds to the CITY.

D. Upon termination of this Contract, CORPORATION must immediately provide CITY access to all documents, records, payroll, minutes of meetings, correspondence and all other data pertaining to Grant made to CORPORATION pursuant to this Contract.

IX. PROGRAM INCOME

Income generated by the Program, is considered Program Income. CORPORATION will annually report all program income generated by activities carried out with Grant funds made available under this Contract. By way of further limitations, CORPORATION may use such income during the Contract period for activities permitted under this Contract and shall reduce requests for additional funds by the amount of any such program income balance on hand. All unused program income shall be returned to the CITY at the end of the Contract period.

X. INDEPENDENT CONTRACTOR

This is a Contract by and between independent contractors and is not intended and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between CORPORATION and CITY. CORPORATION, including its officers, employees, agents or independent contractors or subcontractors, shall not have any claim under this Contract or otherwise against CITY for any Social Security, Worker's Compensation, or employee benefits extended to employees of CITY.

XI. ASSIGNABILITY

CITY is entering into this Contract based on the experience, skill, and ability to perform of the CORPORATION. The CORPORATION recognizes that its qualifications and identify are of particular concern to the CITY in view of the CITY's interest in providing services to lower income persons and the CITY's reliance on the unique qualifications of the CORPORATION. Consequently, this Contract may not be assigned to another CORPORATION, person, partnership or any other entity without the prior written approval of CITY. None of the work or services to be performed hereunder may be assigned, delegated or subcontracted to third parties without the prior written approval of CITY, which the CITY may withhold in its sole discretion. Copies of all third party contracts shall be submitted to CITY at least ten (10) days prior to the proposed effective date. In the event CITY approves of any such assignment, delegation or subcontract, CORPORATION shall remain fully liable for all obligations and requirements under this Contract including the performance and any liabilities attaching to the assignees' actions or omissions.

XII. DISCLOSURE OF CONFIDENTIAL CLIENT INFORMATION

CITY and CORPORATION agree to maintain the confidentiality of any information regarding applicants for services offered by the Program pursuant to this Contract or their immediate families which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the written permission of the applicant, such information will be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Contract, and then only to persons having responsibilities under this Contract, including those furnishing services under the Program through approved subcontracts.

XIII. HOLD HARMLESS

In addition to the indemnity obligations set forth in Exhibit E, "Basic Insurance and Bond Requirements for Non-Profit Contracts", CORPORATION will indemnify and hold harmless the CITY, its employees, agents, and officials, members of boards and commissions, from any and all claims, actions, suits, charges and judgments whatsoever, with respect to any damages, including attorney's fees and court costs, arising out of the failure of the CORPORATION's Program to comply with applicable laws, ordinances, codes, regulations and decrees.

XIV. WAIVER OF RIGHTS AND REMEDIES

In no event will any payment by CITY constitute or be construed to be a waiver by CITY of any breach of the covenants or conditions of this Contract or any default which may then exist on the part of CORPORATION, and the making of any such payment while any such breach or default will in no way impair or prejudice any right or remedy available to CITY with respect to such breach or default. In no event will payment to CORPORATION by CITY in any way constitute a waiver by CITY of its rights to recover from CORPORATION the amount of money paid to CORPORATION on any item, which is not eligible for payment under the Program or this Contract.

XV. NON-DISCRIMINATION

CORPORATION will comply with all applicable Federal, State and local laws and regulations including the City of Cupertino's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. CORPORATION will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall CORPORATION discriminate in provision of services provided in this Contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

This non-discrimination provision must be included in CORPORATION's contracts with subcontractors and vendors when utilizing the Grant funds disbursed for this program.

XVI. AMENDMENTS

Other than the amendment related to a second year renewal option as stated in Section III. above, amendments to the terms or conditions of this Contract must be requested in writing by a duly authorized representative of the party desiring such amendments, and any such amendment shall be effective only upon the mutual agreement in writing of the parties hereto. Amendments will

not invalidate this Contract, nor relieve or release the CITY or the CORPORATION from its obligations under this Contract.

XVII. INTEGRATED DOCUMENT

This Contract contains the entire agreement between CITY and CORPORATION with respect to the subject matter hereof. No written or oral agreements with any officer, agent or employee of CITY prior to execution of this Contract shall affect or modify any of the terms of obligations contained in any documents comprising this Contract.

XVIII. MISCELLANEOUS

A. Captions. The captions and section headings used in this Contract are for convenience of reference only, and the words contained herein will, in no way, be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

B. Discretion Retained By CITY. CITY's execution of this Contract in no way limits the discretion of the CITY in the permit and approval process in connection with the Program.

C. Exhibits. All Exhibits attached hereto and referred to in this Contract are incorporated herein by this reference as if set forth fully herein. Exhibits are as follows: Exhibit A (Program Description), Exhibit B (Program Work Plan), Exhibit C (Proposed Implementation Time Schedule), Exhibit D (Program Budget), Exhibit E (Basic Insurance and Bond Requirements for Non-Profit Contracts).

D. Interpretation. Each party to this Contract has had an opportunity to review the Contract, confer with legal counsel regarding the meaning of the Contract, and negotiate revisions to the Contract. This Contract shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The parties have read and reviewed this Contract and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time, or any other state law, or common law principle) shall not apply to the interpretation of this Contract.

E. Third-Party Beneficiary. There shall be no third party beneficiaries to this Contract.

F. Choice of Law and Venue. This Contract shall be governed by and construed in accordance with California law. Venue shall be Santa Clara County.

G. Parties Bound. Except as otherwise limited herein, the provisions of this Contract shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

H. Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Contract, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

I. Severability. If any Term of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

J. Authorization. The persons signing below are duly authorized to execute this Contract.

K. Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Contract the day and year above written.

CORPORATION:

CITY:

**CITY OF CUPERTINO, a municipal
corporation**

By: _____

By: _____

[NAME]
[TITLE]

David Brandt
City Manager

**APPROVED AS TO FORM AND
LEGALITY:**

ATTEST:

Randolph Stevenson Hom Date
City Attorney

Grace Schmidt Date
City Clerk

EXHIBIT A

PROGRAM DESCRIPTION

Agency Name:			
Executive Director:	Project Manager:	Grant # (For Office Use Only)	
Street Address:	City:	State:	Zip Code:
Telephone number:	Fax Number:	Project Manager E-mail Address:	

Name of Project/Program:
Project/Program Location:

Project Description:




EXHIBIT B
PROGRAM WORK PLAN
FY [YEAR]

AGENCY NAME:

PROGRAM NAME:

Objectives	Benchmarks for Each Quarter				
	1 st	2 nd	3 rd	4 th	TOTAL

EXHIBIT C
PROPOSED IMPLEMENTATION TIMELINE SCHEDULE
FY [YEAR]

AGENCY NAME:

PROGRM NAME:

Activity Number & Description:

Activity #	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
1.												
2.												

**EXHIBIT D
PROGRAM BUDGET
FY [YEAR]**

Agency Name:

Project Name:

Proposed Program Expenses	FY [YEAR]
Total Expenses	

EXHIBIT E

BASIC INSURANCE AND BOND REQUIREMENTS FOR NON-PROFIT CONTRACTS

Definition of Contractor: The "**Contractor**" as the word is used in this Exhibit E is the party contracting with the City of Cupertino for the direct distribution of BMR AHF funds.

Indemnity

The Contractor shall indemnify, defend, and hold harmless the City of Cupertino (hereinafter "City"), its officers, agents and employees from any loss, liability, claim, injury or damage arising out of, or in connection with performance of this Contract by Contractor and/or its agents, employees or subcontractors, excepting only loss, injury or damage caused solely by the acts or omissions of personnel employed by the City. It is the intent of the parties to this Contract to provide the broadest possible coverage for the City. The Contractor shall reimburse the City for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the City under this Contract.

Insurance

Without limiting the Contractor's indemnification of the City, the Contractor shall provide and maintain at its own expense, during the Term of this Contract, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Contract, the Contractor shall provide on the City's own form or a form approved by the City's Insurance Manager an original plus one copy of a Certificate of Insurance certifying that coverage as required herein has been obtained and remains in force for the period required by this Contract. **The contract number and project name must be stated on the Certificate of Insurance.** The City's Special Endorsement form shall accompany the certificate. Individual endorsements executed by the insurance carrier may be substituted for the City's Special Endorsement form if they provide the coverage as required. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the address as shown on the City's Certificate of Insurance form and to the Community Development Department at the address set forth in this Contract at Section VI. Program COORDINATION, Paragraph C., NOTICES. The Contractor shall not issue a Notice to Proceed with the work under this Contract until it has obtained all insurance required and such insurance has been approved by the City. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Notice of Cancellation or Reduction of Coverage

All policies shall contain a special provision for thirty (30) days prior written notice of any cancellation or reduction in coverage to be sent to the Community Development Department, 10300 Torre Avenue, Cupertino, CA 95014.

C. Qualifying Insurers

All policies shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII, according to the current Best's Key Rating Guide, unless otherwise approved by the City's Insurance Manager.

D. Insurance Required

1. Comprehensive General Liability Insurance - for bodily injury (including death) and property damage which provides limits of not less than one million dollars (\$1,000,000) combined single limit (CSL) per occurrence.

OR

2. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. General limit per occurrence - \$1,000,000
 - b. General limit aggregate - \$2,000,000
 - c. Products/Completed Operations- \$1,000,000 aggregate
 - d. Personal Injury limit - \$1,000,000

If coverage is provided under a Commercial General Liability Insurance form, the carrier shall provide the City Insurance Manager with a quarterly report of the amount of aggregate limits expended to that date. If over 50% of the aggregate limits have been paid or reserved, the City may require additional coverage to be purchased by the Contractor to restore the required limits.

3. For either type of insurance, coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed Operations with limits of one million dollars (\$1,000,000) per occurrence/ aggregate to be maintained for two (2) years following acceptance of the work by the City.
 - c. Contractual Liability expressly including liability assumed under this Contract.
 - d. Personal Injury liability.
 - e. Independent Contractors' (Protective) liability.
 - f. Severability of Interest clause providing that the coverage applies separately to each insured except with respect to the limits of liability.

4. For either type of insurance, coverage shall include the following endorsements, copies of which shall be provided to the City:
 - a. Additional Insured Endorsement:

Such insurance as is afforded by this policy shall also apply to the City of Cupertino, and members of the City Council, and the officers, agents and employees of the City of Cupertino, individually and collectively, as additional insureds.
 - b. Primary Insurance Endorsement:

Such insurance as is afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the City of Cupertino, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.
 - c. Notice of Cancellation or Change of Coverage Endorsement:

This policy may not be cancelled nor the coverage reduced by the Company without 30 days prior written notice of such cancellation or reduction in coverage to the City of Cupertino at the address shown on the Certificate of Insurance.
 - d. Contractual Liability Endorsement:

This policy shall apply to liability assumed by the insured under written contract with the City of Cupertino.
 - e. Personal Injury Endorsement:

The provisions of this policy shall provide Personal Injury coverage.
 - f. Severability of Interest Endorsement:

The insurance afforded by this policy shall apply separately to each insured that is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.
5. Comprehensive Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
6. Worker's Compensation and Employer's Liability Insurance for:
 - a. Statutory California Workers' Compensation coverage including a broad form all-states endorsement.

- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence for all employees engaged in services or operations under this Contract.
- c. Inclusion of the City and its governing board(s), officers, representatives, agents, and employees as additional insureds, or a waiver of subrogation.

7. Professional Errors and Omissions Liability Insurance

This type of insurance should be provided by persons/entities you contract with to provide you with professional services.

- a. Limits of not less than one million dollars (\$1,000,000).
- b. If this policy contains a self retention limit, it shall not be greater than ten thousand dollars (\$10,000) per occurrence/event.
- c. This coverage shall be maintained for a minimum of two (2) years following termination of this Contract.

The City must first approve any exceptions to the above requirements.

8. Bond Requirements

Fidelity Bond - Before receiving compensation under this Contract, Contractor will furnish City with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Contract, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the City cited herein. If such bond is cancelled or reduced, Contractor will notify City immediately, and City may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Contract, at the option of the City.

9. Special Provisions

The following provisions shall apply to this Contract:

- a. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the City or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Contract, including but not limited to the provisions concerning indemnification.
- b. The City acknowledges that some insurance requirements contained in this Contract may be fulfilled by self-insurance on the part of the Contractor.

However, this shall not in any way limit liabilities assumed by the Contractor under this Contract. The City shall approve any self-insurance in writing.

- c. The City reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.
- d. If the Contractor fails to maintain such insurance as is called for herein, the City must order the Contractor to immediately suspend work at Contractor's expense until a new policy of insurance is in effect.