

**FIRST AMENDMENT
TO BELOW MARKET-RATE (BMR) AFFORDABLE HOUSING FUND (AHF)
CITY/NON-PROFIT CONTRACT**

This First Amendment to Contract (the "First Amendment") is entered into between [NAME] (CORPORATION) and the **CITY OF CUPERTINO** (CITY) to amend the Below Market-Rate (BMR) Affordable Housing Fund (AHF) Program Contract (CONTRACT) [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 granted CORPORATION a portion of CITY'S BMR AHF 2018-19 budget for the Program to be operated within CITY for the benefit of low and very low-income households; and

WHEREAS, CITY has secured additional BMR AHF funds and CITY and CORPORATION desire to extend and amend the Contract to continue to fund the Program.

THEREFORE, the parties agree to the following amendments and revisions to the Contract:

I. PROGRAM

In the original Contract, CITY allocated the sum of [DOLLARS (\$____)] for the period of [DATE] to [DATE], in BMR AHF funds to CORPORATION, for the purpose of implementing CORPORATION'S program (hereinafter " Program").

Pursuant to this First Amendment to the Contract, CITY agrees to allocate additional funds from its current BMR AHF budget to CORPORATION in the sum of [DOLLARS (\$____)] for the period of [DATE] to [DATE] for CORPORATION to continue to implement the Program. The Program is more particularly described in Exhibits A-E to the Contract, and said Exhibits, as may be amended or modified, are attached to this First Amendment and incorporated herein by reference.

1. Exhibit A: Program Description;
2. Exhibit B: Program Work Plan;
3. Exhibit C: Proposed Implementation Timeline Schedule;
4. Exhibit D: Program Budget;
5. Exhibit E: Basic Insurance and Bond Requirements For Non-Profit Contracts

The total budget for the Program and allocation of funds from [DATE] through [DATE] shall not exceed [DOLLARS (\$____)].

II. TERM

The term of the Contract is extended for one year, from [DATE] through [DATE], unless otherwise amended or terminated earlier pursuant to Section VI or Section VII of the Contract.

IV. OBLIGATIONS OF CORPORATION

In **Paragraph C, Fiscal Responsibilities of CORPORATION**, subparagraphs 6 and 7 are amended and paragraphs 8 and 9 are added to read as follows:

6. Record the Regulatory Agreement against the property in the form attached as Exhibit F, "Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants."

7. Obtain all construction permits required to implement the Program.

8. Items (1) through (7) 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 the Contract and this First Amendment.

9. 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."

The following provision is added to the Contract:

J. Prevailing Wages. CORPORATION is required to become familiar and comply with all local, state and federal laws and regulations pertaining to the Program. With respect to complying with prevailing wages, CORPORATION will pay, and shall cause any consultants or contractors to pay, prevailing wages in any construction work related to the Program as those wages are determined pursuant to California Labor Code section 1720 et seq. CORPORATION will comply with all other applicable provisions of the California Labor Code Sections 1720 et seq. and with the implementing regulations of the Department of Industrial Relations (the "DIR"), including but not limited to:

- a. require consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the DIR and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR;

- b. keep and retain, and cause consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed as required by California Labor Code Section 1777.5 et seq.;
- c. post at the property, or cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;
- d. cause contractors and subcontractors working on the Program to be registered as set forth in California Labor Code Section 1725.5;
- e. cause contractors and subcontractors, in all calls for bids, bidding materials and construction contract documents to specify that:
 - i. *no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for construction related to this Program unless registered with the DIR pursuant to California Labor Code Sec. 1725.5; and*
 - ii. *any construction work related to this Program is subject to compliance monitoring and enforcement by the DIR.*
- f. provide the City all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);
- g. cause contractors to post job site notices, as prescribed by regulation by the DIR; and
- h. cause contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

CORPORATION agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including CORPORATION, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Sections 1720 et seq., to employ apprentices pursuant to California Labor Code Sections 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with construction work related to the Program and subject Property. The requirements in this provision shall survive the termination of the Contract.

XVIII. MISCELLANEOUS

Paragraph C, Conflict of Interest, is amended to read as follows:

C. Conflict of Interest.

1. General Provision. 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.

2. Provisions Specifically Applicable to BMR Units. In addition to subparagraph (1) above, the following individuals are ineligible to purchase or rent a BMR unit at the Property:

- CITY employees and officials (and their immediate family members and dependents) who have policy-making authority or influence regarding CITY housing programs, or who participate in making decisions regarding CITY housing programs, administer CITY housing programs, or whose salary is paid in any part from a CITY housing program;
- Any consultant to the CITY and employees of the consultant (and their immediate family members and dependents) who have policy-making authority or influence regarding CITY housing programs, or who participate in making decisions regarding CITY housing programs, administer CITY housing programs, or whose salary is paid in any part from the Grant or any other CITY housing program. These provisions regarding consultants apply to CORPORATION and its employees, their immediate family members, and dependents;
- The construction contractor for the Program and its officers and employees (and their immediate family members and dependents); or

- Any other individual who has a conflict of interest as defined by federal or state law or those covered by the CITY's adopted Conflict of Interest Code.

CORPORATION shall annually inform the CITY if any of its employees are on the wait list for BMR units and of their placement on the wait list. If an employee of CORPORATION is being evaluated for the rental of a particular BMR unit at the property, then all review, evaluation, and decision regarding that BMR unit must be performed by the CITY, not CORPORATION.

All Contract terms, covenants and conditions which are not herein amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective on the later date shown below.

CORPORATION:

[NAME]

By: _____
(print name)

NAME Date
Executive Director

**APPROVED AS TO FORM AND
LEGALITY:**

Randolph Stevenson Hom Date
City Attorney

CITY:

**CITY OF CUPERTINO, a municipal
corporation:**

By: _____
(print name)

Aarti Shrivastava Date
Assistant City Manager

ATTEST:

Grace Schmidt Date
City Clerk

EXPENDITURE DISTRIBUTION

PO #	
Original Contract:	
Amendment #1:	\$XXX
Total:	\$XXX

EXHIBIT A
PROGRAM DESCRIPTION
FY 2017/18

Agency Name: NAME		DUNS #: Not Applicable (Only for CDBG)	
Chief Financial Officer: XXX	Project Manager: XXX	Project # (For Office Use Only) BMR AHF-	
Street Address: XXX	City: XXX	State: CA	Zip Code: XXX
Telephone number: XXX	Fax Number: XXX	Project Manager E-mail Address: xxx	

Name of Project/Program: xxx
Project/Program Location: City-wide

Project Description:

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EXHIBIT B
PROGRAM WORK PLAN
FY 2018/19

AGENCY NAME: NAME
PROGRAM NAME: XXX

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

EXHIBIT C
PROPOSED IMPLEMENTATION TIMELINE SCHEDULE
FY 2018/19

AGENCY NAME: NAME
PROGRAM NAME: XXX

Activity Number & Description:

#1.
#2.
#3.

Activity #	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total

EXHIBIT D

**PROGRAM BUDGET
FY 2018/19**

AGENCY NAME: NAME

PROGRAM NAME: XXX

Proposed Project Expenses	FY 2018/19
Salaries/Benefits/Payroll/Taxes	\$xxx
Office Expenses (Occupancy, Telephone, Insurance, Supplies, Equipment, etc...)	\$xxx
Total Expenses	\$xxx

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.