

**AGREEMENT BETWEEN THE HOUSING AUTHORITY OF THE
COUNTY OF SAN MATEO AND HIP HOUSING**

This Agreement is entered into this _____ day of _____, 20_____, by and between the Housing Authority of the County of San Mateo, a political subdivision of the state of California, hereinafter called "HACSM," and HIP Housing, hereinafter called "Provider."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, HACSM may contract with independent contractors for the furnishing of such services to or for the County or HACSM; and

Whereas, it is necessary and desirable that the Provider be retained for the purpose of providing services through the Provider-Based Assistance (PBA) program.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A— Scope of Services

Exhibit B—Program Budget

2. Services to be performed by Provider

In consideration of the payments set forth in this Agreement and in Exhibit B, Provider shall perform services for HACSM in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Provider in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, HACSM shall make payment to Provider based on the rates and in the manner specified in Exhibit B. HACSM reserves the right to withhold payment if HACSM determines that the quantity or quality of the work performed is unacceptable. In no event shall HACSM's total fiscal obligation under this Agreement exceed One million, three hundred one thousand, nine hundred and eighty-two dollars (\$1,301,982). In the event that the HACSM makes any advance payments, Provider agrees to refund any amounts in excess of the amount owed by the HACSM at the time of contract termination or expiration. Provider is not entitled to payment for work not performed as required by this agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2018 through June 30, 2023.

5. Termination

This Agreement may be terminated by Provider or by the Executive Director of HACSM or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Provider shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

HACSM may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or HACSM funds by providing written notice to Provider as soon as is reasonably possible after HACSM learns of said unavailability of outside funding.

HACSM may terminate this Agreement for cause. In order to terminate for cause, HACSM must first give Provider notice of the alleged breach. Provider shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Provider fails to cure the breach within this period, HACSM may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that HACSM provides notice of an alleged breach pursuant to this section, HACSM may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. HACSM has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and HACSM shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Provider under this Agreement shall become the property of HACSM and shall be promptly delivered to HACSM. Upon termination, Provider may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Provider agrees and understands that the work/services performed under this Agreement are performed as an independent Provider and not as an employee of HACSM and that neither Provider nor its employees acquire any of the rights, privileges, powers, or advantages of HACSM employees.

8. Hold Harmless

a. General Hold Harmless

Provider shall indemnify and save harmless HACSM and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Provider under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Provider or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Provider's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of HACSM and/or its officers, agents, employees, or servants. However, Provider's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which HACSM has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Provider to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Provider shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Provider under this Agreement without the prior written consent of HACSM. Any such assignment or subcontract without HACSM's prior written consent shall give HACSM the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Provider shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by HACSM, and Provider shall use diligence to obtain such insurance and to obtain such approval. Provider shall furnish HACSM with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Provider's coverage to include the contractual liability assumed by Provider pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to HACSM of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Provider shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Provider certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Provider shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Provider and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Provider's operations under this Agreement, whether such operations be by Provider, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- | | |
|--|-------------|
| (a) Comprehensive General Liability... | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance... | \$1,000,000 |
| (c) Professional Liability..... | \$1,000,000 |

HACSM and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to HACSM and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the HACSM or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, HACSM, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Provider pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or HACSM financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Provider will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Provider shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Provider's equal employment policies shall be made available to HACSM upon request.

c. Section 504 of the Rehabilitation Act of 1973

Provider shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Provider shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Provider's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Provider and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Provider certifies that no finding of discrimination has been issued in the past 365 days against Provider by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Provider within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Provider shall provide HACSM with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the HACSM.

g. Reporting; Violation of Non-discrimination Provisions

Provider shall report to the HACSM the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Provider that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Provider to penalties, to be determined by the HACSM, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Provider from being considered for or being awarded a HACSM contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the HACSM.

To effectuate the provisions of this Section, HACSM shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Provider under this Agreement or any other agreement between Provider and HACSM.

13. Compliance with County Employee Jury Service Ordinance

Provider shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Provider shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Provider, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Provider or that the Provider may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Provider certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Provider has no employees in San Mateo County, it is sufficient for Provider to provide the following written statement to HACSM: "For purposes of San Mateo County's jury service ordinance, Provider certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Provider shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Provider acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Provider shall maintain all required records relating to services provided under this Agreement for three (3) years after HACSM makes final payment and all other pending matters are closed, and Provider shall be subject to the examination and/or audit by HACSM, a Federal grantor agency, and the State of California.

(b) Provider shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by HACSM.

(c) Provider agrees upon reasonable notice to provide to HACSM, to any Federal or State department having monitoring or review authority, to HACSM's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of HACSM, to:

Name/Title: Ken Cole, Executive Director
Address: 264 Harbor Boulevard, Bldg A, Belmont, CA 94002
Telephone: 650-802-3300
Facsimile: 650-802-3373
Email: KCole@smchousing.org

In the case of Provider, to:

Name/Title: Kate Comfort Harr, Executive Director
Address: 800 S. Claremont #210, San Mateo, CA 94402
Telephone: 650-348-6660
Email: kcomfort@hiphousing.org

18. Electronic Signature

Both HACSM and Provider wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and San Mateo County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

Provider bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Provider's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

HIP HOUSING

By: _____

Kate Comfort Harr, Executive Director

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO

By: _____

Ken Cole, Executive Director

Date: _____

Exhibit A

In consideration of the budget set forth in Exhibit B, Provider shall provide the services stated in its proposal submitted to HACSM on 4/26/2018, which is incorporated to this Agreement by reference as if set forth fully herein.

Exhibit B

In consideration of the services provided by Provider described in Exhibit A and subject to the terms of the Agreement, HACSM shall pay Provider based on the attached budget.