

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND UNITED HOPE BUILDERS FOR WORKFORCE DEVELOPMENT

This Agreement is entered into effective as of this 18th day of May 2021, by and between the County of San Mateo, a political subdivision of the State of California, hereinafter called “County,” and United Hope Builders, a California corporation that is in the process of securing 501c3 status, hereinafter called “Contractor” (together, the “Parties”).

* * *

WHEREAS, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

WHEREAS, the County has on March 3, 2020, the County’s Health Officer issued a “Declaration of Local Health Emergency Regarding Novel Coronavirus 2019,” and the County Manager, as the County’s Director of Emergency Services (the “Director”), issued a proclamation of local emergency pursuant to Government Code section 8630 and Chapter 2.46 of the County’s Ordinance Code, which proclamation was ratified by the Board of Supervisors (the “Board”) on March 10, 2020, pursuant to Government Code section 8630, and extended by the Board on April 7, 2020, until such time as the local emergency is terminated (the “COVID-19 Local Emergency”); and

WHEREAS, on March 4, 2020, the Governor of the State of California proclaimed a State of Emergency related to COVID-19 throughout the State of California; and

WHEREAS, on March 13, 2020, the President of the United States proclaimed that the COVID-19 outbreak in the United States constituted a national emergency, beginning March 1, 2020; and

WHEREAS, the Director and the Director’s designee, the Incident Commander at the Emergency Operations Center (EOC), have made many requests for services, supplies, and equipment, which expenses have been made through County department appropriations as well as through agreements executed by the Director or the EOC Incident Commander from March 3, 2020, to the present; and

WHEREAS, certain communities in San Mateo County have been especially negatively financially impacted by the economic hardships wrought by the COVID-19 public health crisis, including the lower income communities in the East Palo Alto area of the County, as well as immigrants and those reentering the community after incarceration; and

WHEREAS, many in these communities have traditionally been underrepresented in the manufacturing sector of the economy and the County has a strong interest in increasing employment opportunities, in general, and manufacturing employment opportunities, in particular, in these communities; and

WHEREAS, the County has a strong and longstanding interest in increasing the availability of affordable housing for extremely low-income County residents; and

WHEREAS, Contractor intends to work with indieDwell, a certified B corporation, to establish a plant in East Palo Alto, California, that will manufacture affordable modular housing (“Manufacturing Plant”) and when the Manufacturing Plant is operating at full capacity, Contractor anticipates that it will employ up to eighty individuals in line manufacturing positions and Contractor has informed the County that it will focus, in particular, on employing a diverse and inclusive workforce; and

WHEREAS, the Manufacturing Plant will be owned by Contractor, indieDwell, and the employees of the Manufacturing Plant, subject to such employees vesting and other industry-standard terms associated with operating a stock incentive program; and

WHEREAS, Contractor has requested assistance from the County with initial salary and benefit expenses for the manufacturing line employees at the Manufacturing Plant during the initial stages of the Manufacturing Plant's operations; and

WHEREAS, the creation and sustaining of diverse employment opportunities, including in the manufacturing sector, that are available to all San Mateo County residents, including those not traditionally represented in the manufacturing sector, is essential to the health, welfare, diversity, and long-term sustainability of communities throughout the County; and

WHEREAS, the County, working in collaboration with other government agencies and stakeholders, has taken multiple actions to assist and support employees and businesses and nonprofit agencies and community organizations in San Mateo County, in recovering from the severe economic impacts caused by the COVID-19 public health emergency and it is appropriate to continue such collaborations, including to create new employment opportunities for County residents; and

WHEREAS, at its meeting of May 4, 2021, the San Mateo County Board of Supervisors adopted Resolution No. _____, authorizing and directing the execution of a grant agreement with Contractor, pursuant to which the County agreed to grant \$500,000 to Contractor, conditioned on Contractor establishing and operating a modular housing manufacturing plant in East Palo Alto, as described herein, provided that the grant funds shall be used by the Contractor only to pay for salary and benefits for the plant's manufacturing line employees.

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—Services
- Exhibit B—Payments and Rates
- Attachment E – Emergency Agreement Requirements
- Attachment I—§ 504 Compliance

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County 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 Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. **In no event shall County's total fiscal obligation under this Agreement exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000).**

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from May 18, 2021 through December 31, 2022.

5. Termination

See Attachment E for provisions setting forth the terms of termination.

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 Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

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

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County 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 Contractor 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 Contractor 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 Contractor’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 County and/or its officers, agents, employees, or servants. However, Contractor’s duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County 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 Contractor 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

Contractor 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 Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice. Notwithstanding the foregoing, the parties acknowledge and agree that the Contractor may retain consultants to provide client support services and/or to deliver individual workshops and one-to-one technical assistance to clients, as described in Exhibit A to this Agreement.

10. Insurance

a. General Requirements

Contractor 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 County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County 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

Contractor 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, Contractor 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

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor 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 Contractor's operations under this Agreement, whether such operations be by Contractor, 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

County 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

County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County 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, County, 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 Contractor 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 County 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.

Contractor 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

Contractor 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. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor 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

Contractor 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 Contractor'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 Contractor 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

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor 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 Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County 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 County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager 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 Contractor 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 Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County 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 County Manager.

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

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor 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 Contractor, 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 Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor 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, Contractor 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 Contractor 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

See Attachment E for provisions setting forth the terms of Contractor's retention of records and the County's right to monitor and audit.

15. Merger Clause; Amendments

See Attachment E for provisions setting forth the terms regarding merger and amendment of the Agreement.

16. Dispute Resolution; Controlling Law; Venue

See Attachment E for provisions setting forth the terms of controlling law and venue.

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 County, to:

Name/Title: Peggy Jensen/Deputy County Manager
Address: 400 County Center, Redwood City, CA 94063
Telephone: 650-363-4598
Email: pjensen@smcgov.org

In the case of Contractor, to:

Name/Title: Michael Brownrigg, Chief of Staff, United Hope Builders, Inc.
Address: 1852 Bay Road, East Palo Alto, CA 94303
Telephone: 415-987-3230
Email: mbrownrigg@unitedhopebuilders.org

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and 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.

19. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor'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:

For Contractor: United Hope Builders, Inc.



Contractor Signature

May 12, 2021
Date

United Hope Builders
Contractor Name (please print)

COUNTY OF SAN MATEO

By:

Director of Emergency Services, San Mateo County

Date:

Exhibit A

Services

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

Establishment of 501c3 Status: Contractor shall complete the process of securing 501c3 tax exempt status. The County shall not be obligated to pay any grant funds provided for in this Agreement until Contractor has completed the process of receiving 501c3 status.

Establishment of Legal/Programmatic Structure for Ownership of Manufacturing Plant: Not later than _____, Contractor will establish a legal and programmatic structure for ownership of the Manufacturing Plant that vests Contractor with at least a forty percent (40%) ownership interest in the Manufacturing Plant and that creates a pool of ownership interest equal to at least twenty percent (20%) of the total ownership interests in the Manufacturing Plant which shall be owned by the employees of the Manufacturing Plant, subject to vesting and other industry-standard terms associated with operating a stock option program. This legal and programmatic structure and the documentation implementing this structure shall be in form and substance that are reasonably satisfactory to the County. The County shall not be obligated to pay any grant funds provided for in this Agreement until Contractor has provided the County with reasonably satisfactory documentation establishing that this legal and programmatic structure has been implemented and is in effect.

Establishment of Written Business Plan: Prior to the opening and beginning of manufacturing operations at the Manufacturing Plant, Contractor will provide the County with a written Business Plan for the operation of the Manufacturing Plant (“Business Plan”). The Business Plan shall be in a form and shall include substance reasonably acceptable to the County and shall include operational and financial elements that are commonly included in business plans for operations of a similar nature and scale. The parties agree that the Manufacturing Plant shall manufacture affordable modular housing units. Contractor shall use reasonable efforts to implement the Business Plan. The County shall not be obligated to pay any grant funds provided for in this Agreement until Contractor has provided the County with such reasonably satisfactory written Business Plan.

Opening and Beginning of Manufacturing Operations at the Manufacturing Plant: Contractor will commence manufacturing operations at the Manufacturing Plant. For purposes of this Agreement, the Manufacturing Plant shall be deemed to have opened and begun manufacturing operations when employees at the Manufacturing Plant have begun work on the first affordable modular housing unit at the Manufacturing Plant. Contractor shall inform the County, in writing, when it has opened and begun manufacturing operations at the Manufacturing Plant and the County shall promptly and reasonably determine whether it agrees that the Manufacturing Plant is open and that manufacturing operations have begun. In the event that the County does not

agree that the Manufacturing Plant has opened and/or that manufacturing operations have begun, the County shall promptly inform Contractor, in writing, of the basis for this determination. The County shall not be obligated to pay any grant funds provided for in this Agreement until the Manufacturing Plant is opened and manufacturing operations have begun.

Use of Grant Funds: Contractor shall use all grant funds paid by County to Contractor pursuant to this Agreement only to pay for salaries and benefits expenses for individuals employed as line (i.e., in manufacturing, and not management) employees at the Manufacturing Plant (“Qualifying Expenditures”). Contractor shall provide the County with documentation and statements in such form and at such intervals as may be reasonably directed by the County to validate that all grant funds paid by the County to the Contractor have been used solely for Qualifying Expenditures and in no event shall County’s grant payment in any given month exceed the Qualifying Expenditures that Contractor has incurred in that month.

Other Reporting Requirements: Contractor will reasonably cooperate with the County to provide other periodic summaries regarding the structure, function and operations of the Manufacturing Plant, in a format reasonably designated by the County.

Exhibit B

Payments and Rates

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following terms:

Subject to satisfactory completion of each of the prerequisites set forth in Exhibit A to this Agreement (and subject to their ongoing fulfillment), the County shall pay Contractor a total grant not to exceed Five Hundred Thousand Dollars (\$500,000). This grant shall be paid at the rate of up to one Hundred Thousand Dollars (\$100,000) per month, until a total of \$500,000 has been paid to Contractor, provided that the County shall only be obligated to make a monthly payment if the Manufacturing Plant remains in operation during the month for which the grant payment is sought and further provided that the grant payment made to Contractor in any month shall not exceed the amount of Qualifying Expenditures that the Contractor has incurred in that month.

Contractor shall invoice the County for each monthly payment provided for in this Agreement and each invoice shall include a certification that the Manufacturing Plant shall remain open and operating during the month covered by the monthly payment and that the payment shall be used only for Qualifying Expenditures.