

**CITY OF PALO ALTO CONTRACT NO. C23187501**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**BETWEEN THE CITY OF PALO ALTO AND PAHC HOUSING SERVICES, LLC**

This Agreement for Professional Services (this “Agreement”) is entered into as of the 19<sup>th</sup> day of May, 2023 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and PAHC Housing Services, LLC, a California Organization, located at 3460 West Bayshore Road, Suite 104, Palo Alto , CA 94303 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

**RECITALS**

A. CITY intends to award a qualified firm to provide administrative services for the City’s Below Market Rate Program (the “Project”) and desires to engage a consultant to manage program outreach, ownership, rental, and the Stanford West BMR unit programs within the policy framework set forth by the City in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY, in reliance on these representations, desires to engage CONSULTANT to provide the Services as more fully described in Exhibit A, entitled “SCOPE OF SERVICES”.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree as follows:

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described in Exhibit A in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

☐ Optional On-Call Provision (This provision only applies if checked and only applies to on-call agreements.)

CITY may elect to, but is not required to, authorize on-call Services up to the maximum compensation amount set forth in Section 4 (Not to Exceed Compensation). CONSULTANT shall provide on-call Services only by advanced, written authorization from CITY as detailed in this Section. On-call Services, if any, shall be authorized by

CITY, as needed, with a Task Order assigned and approved by CITY's Project Manager, as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1 entitled "PROFESSIONAL SERVICES TASK ORDER". Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for on-call Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY's Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation due to CONSULTANT for all Task Orders issued under this Agreement shall not exceed the amount of compensation set forth in Section 4. CONSULTANT shall only be compensated for on-call Services performed under an authorized Task Order and only up to the maximum compensation amount set forth in Section 4. Performance of and payment for any on-call Services are subject to all requirements and restrictions in this Agreement.

## **SECTION 2. TERM.**

The term of this Agreement shall be from the date of its full execution through June 30, 2025 unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit B, entitled "SCHEDULE OF PERFORMANCE". Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION.** The compensation to be paid to CONSULTANT for performance of the Services shall be based on the compensation structure detailed in Exhibit C, entitled "COMPENSATION," including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed **Three Hundred Fifty-Six Thousand, Five Hundred Fifty-Six Dollars and Ten Cents (\$356,556.10)**. The hourly schedule of rates, if applicable, is set out in Exhibit C-1, entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation set forth in this Section 4 shall be at no cost to the CITY.

**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit C or, as applicable, CONSULTANT's schedule of rates set forth in Exhibit C-1. If applicable, the invoice shall also describe the percentage of

completion of each task. The information in CONSULTANT's invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY's Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subcontractors, if any, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

**SECTION 7. COMPLIANCE WITH LAWS.** CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement, as amended from time to time. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

**SECTION 8. ERRORS/OMISSIONS.** CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

**SECTION 9. COST ESTIMATES.** If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds the CITY's stated construction budget by ten percent (10%) or more, CONSULTANT shall make recommendations to CITY for aligning the Project design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

**SECTION 10. INDEPENDENT CONTRACTOR.** CONSULTANT acknowledges and agrees that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees. CONSULTANT will be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax

withholdings, workers' compensation, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performance of the Services, or any agent or employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's provision of the Services only, and not as to the means by which such a result is obtained.

**SECTION 11. ASSIGNMENT.** The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written approval of the City Manager. Any purported assignment made without the prior written approval of the City Manager will be void and without effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the parties.

**SECTION 12. SUBCONTRACTING.**

☒ **Option A: No Subcontractor:** CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

☐ **Option B: Subcontracts Authorized:** Notwithstanding Section 11 (Assignment) above, CITY agrees that subcontractors may be used to complete the Services. The subcontractors authorized by CITY to perform work on this Project are:

CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning compensation of subcontractors. CONSULTANT shall be fully responsible to CITY for all acts and omissions of subcontractors. CONSULTANT shall change or add subcontractors only with the prior written approval of the City Manager or designee.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign Sheryl Klein as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the CONSULTANT's Project Manager or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute Project Manager and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove CONSULTANT personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

CITY's Project Manager is Tim Wong, Planning and Development Department, Long Range

Planning Division, 350 Hamilton Avenue, Palo Alto, CA, 94301, Telephone: 650-329-2493 . CITY's Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, Non-proprietary computations and models, recordings, data, documents, and other materials and developed under this Agreement, in any form or media, shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Services.

**SECTION 15. AUDITS.** CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT's records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

**SECTION 16. INDEMNITY.**

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.3. The acceptance of CONSULTANT's Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 29.4 of this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

**SECTION 18. INSURANCE.**

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit D, entitled "INSURANCE REQUIREMENTS". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

**SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement

or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the notice of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's Services provided in material conformity with this Agreement as such determination is made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28, 29 and 30.

19.4. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement, unless made in accordance with Section 17 (Waivers).

## **SECTION 20. NOTICES.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:                      Office of the City Clerk  
                                      City of Palo Alto  
                                      Post Office Box 10250  
                                      Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Manager at the address of  
                                      CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

## **SECTION 21. CONFLICT OF INTEREST.**

21.1. In executing this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California, as amended from time to time. CONSULTANT agrees to notify CITY if any conflict arises.

21.3. If the CONSULTANT meets the definition of a “Consultant” as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

## **SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.**

22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person’s race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

**SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONSULTANT shall comply with the CITY’s Environmentally Preferred Purchasing policies which are available at CITY’s Purchasing Department, hereby incorporated by reference and as amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY’s Zero Waste Program. Zero Waste best practices include, first, minimizing and reducing waste; second, reusing waste; and, third, recycling or composting waste. In particular, CONSULTANT shall comply with the following Zero Waste requirements:

(a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable-based inks.



(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Department's office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

**SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.**

CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code Section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

**SECTION 25. NON-APPROPRIATION.** This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to time. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

**SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.**

☒ 26.1. **This Project is not subject to prevailing wages and related requirements.** CONSULTANT is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

**SECTION 27. CLAIMS PROCEDURE FOR "9204 PUBLIC WORKS PROJECTS".** For purposes of this Section 27, a "9204 Public Works Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled "Claims for Public Contract Code Section 9204 Public Works Projects".



**This Project is not a 9204 Public Works Project.**

## **SECTION 28. CONFIDENTIAL INFORMATION.**

28.1. In the performance of this Agreement, CONSULTANT may have access to CITY's Confidential Information (defined below). CONSULTANT will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of its obligations to CITY under this Agreement and for no other purpose. CONSULTANT will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to its employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform CONSULTANT's obligations to CITY under this Agreement and for no other purpose, provided that the CONSULTANT informs them of, and requires them to follow, the confidentiality and security obligations of this Agreement.

28.2. "Confidential Information" means all data, information (including without limitation "Personal Information" about a California resident as defined in Civil Code Section 1798 et seq., as amended from time to time) and materials, in any form or media, tangible or intangible, provided or otherwise made available to CONSULTANT by CITY, directly or indirectly, pursuant to this Agreement. Confidential Information excludes information that CONSULTANT can show by appropriate documentation: (i) was publicly known at the time it was provided or has subsequently become publicly known other than by a breach of this Agreement; (ii) was rightfully in CONSULTANT's possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by CONSULTANT from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of CONSULTANT without any use of or access to the Confidential Information; or (v) CONSULTANT has written consent to disclose signed by an authorized representative of CITY.

28.3. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to the extent required by order of a court of competent jurisdiction or governmental body, provided that CONSULTANT will notify CITY in writing of such order immediately upon receipt and prior to any such disclosure (unless CONSULTANT is prohibited by law from doing so), to give CITY an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City promptly upon learning of any breach in the security of its systems or unauthorized disclosure of, or access to, Confidential Information in its possession or control, and if such Confidential Information consists of Personal Information, CONSULTANT will provide information to CITY sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time.

28.5. Prior to or upon termination or expiration of this Agreement, CONSULTANT will honor any request from the CITY to return or securely destroy all copies of Confidential Information. All Confidential Information is and will remain the property of the CITY and nothing contained in this Agreement grants or confers any rights to such Confidential Information on CONSULTANT.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the terms and conditions of the Information Privacy Policy and Cybersecurity Terms and Conditions.

## **SECTION 29. MISCELLANEOUS PROVISIONS.**

29.1. This Agreement will be governed by California law, without regard to its conflict of law provisions.

29.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

29.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

29.4. This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, as amended from time to time.

29.5. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

29.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 30) or CONSULTANT's proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT's proposal (if any), the exhibits shall control.

29.7. The provisions of all checked boxes in this Agreement shall apply to this Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

29.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

29.9. This Agreement may be signed in multiple counterparts, which, when executed by the authorized representatives of the parties, shall together constitute a single binding agreement.

**SECTION 30. EXHIBITS.** Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- ☒ EXHIBIT A: SCOPE OF SERVICES
- ☐ EXHIBIT A-1 PROFESSIONAL SERVICES TASK ORDER
- ☒ EXHIBIT B: SCHEDULE OF PERFORMANCE
- ☒ EXHIBIT C: COMPENSATION
- ☒ EXHIBIT C-1: SCHEDULE OF RATES
- ☒ EXHIBIT D: INSURANCE REQUIREMENTS
- ☐ EXHIBIT E: DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS
- ☐ EXHIBIT F: CLAIMS FOR PUBLIC CONTRACT CODE SECTION 9204  
PUBLIC WORKS PROJECTS
- ☐ EXHIBIT G: INFORMATION PRIVACY POLICY
- ☐ EXHIBIT H: CYBERSECURITY TERMS AND CONDITIONS

***THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS  
ARE ATTACHED.***

## CONTRACT No. C23187501 SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement as of the date first above written.

### CITY OF PALO ALTO

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or designee

### PAHC HOUSING SERVICES, LLC

#### Officer 1

By:

Name:

Title:

DocuSigned by:

*M. Garcia*

24BDE02A7AE348A...  
M. Garcia

CFO

#### Officer 2

By:

Name:

Title:

DocuSigned by:

*Randy Tsuda*

300232C70A4F466...  
Randy Tsuda

President & CEO

## **EXHIBIT A SCOPE OF SERVICES**

CONSULTANT shall provide the Services detailed in this Exhibit A, entitled “SCOPE OF SERVICES”.

CONSULTANT shall provide professional services for the City’s Below Market Rate (BMR) housing program in compliance with policy, guidelines, applicable deed restrictions, BMR Program Procedures Manual and in a manner which increases affordable housing opportunities for low- and moderate-income households. The CONSULTANT shall manage program outreach, ownership, rental, and the Stanford West BMR unit programs within the policy framework set forth by the City and act with independent judgement to ensure deliverables are met in accordance with the terms of this exhibit.

### **TASK 1 - PROGRAM OUTREACH:**

CONSULTANT shall handle all questions and comments through CONSULTANT’S office. CONSULTANT’S BMR assistant and Program Administrator are to be available to take phone calls, e-mails, and walk-ins Monday through Friday from 8:00 a.m. to 5:00 p.m.

CONSULTANT shall do program marketing and outreach via CONSULTANT’S search-engine optimized program information on CONSULTANT’S website, posting flyers at local community centers, libraries, and affordable housing communities as well as to other local affordable housing providers to spread the word about the programs offered by the CONSULTANT.

### **TASK 2 - OWNERSHIP PROGRAM:**

1. Maintain all applicant information and perform an annual update to ensure applicants are still interested and/or qualified for the BMR program and to assist in managing the size of the waiting list.
2. Provide a list of primary lender contacts, serve as an intermediary between the buyer and lender to make sure the buyer understands all costs and details associated with the loan and if needed, point the buyer towards other subordinate loans to assist with the purchase. CONSULTANT shall also actively look to add new lenders to the BMR lender list.
3. Use the most current version of the California Association of Realtors (CAR) purchase forms for use of each BMR sale. CONSULTANT shall coordinate the review, explanation, and signing of the Purchase Agreement. CONSULTANT shall coordinate with the escrow company to send over all signed documents and escrow instructions. CONSULTANT shall assist in holding open houses and ordering necessary inspections. CONSULTANT shall stay in contact with escrow officer throughout the escrow period to ensure the sale closes on time. Copies of all closing documents to be sent to the CONSULTANT’S office after closing and filed in the respective BMR owner’s file.
4. Committing to promoting longevity of the BMR housing inventory shall make every effort to ensure BMR owners’ compliance by maintaining consistent contact with relevant HOA’s and to investigate every complaint and/or concern received regarding a BMR owner potentially being in violation of the Deed Restrictions, e.g., renting out a portion of or their entire home.
5. Troubleshoot homeownership problems that arise with BMR owners that may endanger the BMR Purchase stock. CONSULTANT shall have an open-door policy to encourage BMR owners and renters to seek assistance on any situation which may jeopardize their home. CONSULTANT shall reach out to Alta Housing Resident Services Department for referrals and/or resources to assist owners with various services.

6. Work with a local HUD approved housing agency to provide a bi-annual workshop in Palo Alto, covering topics ranging from program eligibility requirements to loan financing. The workshop is offered at no charge to attendees. A prospective buyer must have attended a workshop to be eligible to purchase a BMR home. CONSULTANT shall be present at every seminar to meet applicants and to answer program questions.
7. Mail a letter out annually to each BMR owner requiring copies of documentation verifying primary owner-occupancy. Documentation includes utility bills, pay stubs, tax returns and property tax bills.
8. Work closely with the CITY to formalize a screening and eligibility process whereby BMR owners facing financial hardship due to unforeseen special assessments could get assistance from the CITY. CONSULTANT shall interview the BMR owner, obtain all relevant income vs. expense documents to prove hardship and either refers the BMR owner to the CITY for approval or denial of the request based on written criteria.
9. Work closely with CITY to assist with creation of and assessment of new BMR Agreements for upcoming housing developments. CONSULTANT shall be involved prior to Regulatory/Development Agreements are signed, CONSULTANT shall review and provide feedback on the language to ensure the Agreements are understandable from the perspective of implementation.
10. Assist the CITY in the growth of the BMR Purchase program by acquisition and rehabilitation of BMR units and properties.
11. Coordinate with CITY staff in the implementation of any BMR Ordinance revisions.
12. Provide advice, consultation, and assistance to CITY staff in negotiations of BMR agreements for new housing developments.
13. Coordinate the process of evaluation, negotiation and financing related to the acquisition and rehabilitation, if necessary, of off-site units or properties contributed under the BMR program.
14. Maintain records and statistics as required by CITY, specifically;
  - a. Annual statistics about the BMR ownership and rental units and the households served; and
  - a. A permanent database and record of all ownership units placed in the program and statistics about current BMR owners, and all households served over the life of the program, including maintenance of files on each BMR owner unit and retention of copies of the actual recorded deed restrictions for the ownership units; and
  - a. Contact information for current BMR owners with mailing labels and, when available, telephone numbers and e-mail addresses.
15. Conduct bi-annual workshops for BMR owners about estate planning. The workshops will include information about what is a living trust, the potential benefits, and the process of putting their residence in a living trust.

### **TASK 3 - RENTAL PROGRAM:**

1. Work closely with applicants who are next in line for BMR rental units, not including Stanford West Apartments, to answer questions about the property and help gather all necessary documentation for income verification. Applications are approved once all verifications and background checks have been received, income and asset calculations are complete, and a determination is made regarding a household's eligibility. Applicants who do not meet the eligibility criteria are sent denial letters with an option to appeal within 14 days.
2. Send out notices to all BMR tenants approximately 90 days in advance of the effective date, schedules re-certification interviews, obtains relevant income and asset documents, completes income calculations, and determines continued eligibility by the process described above. Tenants

who are deemed over income are notified that they have 90 days to either move out of the unit or start paying market rate rent. CONSULTANT shall notify site managers of the results of the tenant recertification immediately following the completion of the calculations.

3. Review and approve all new BMR rental move-in files prior to occupation of a BMR unit. Annually monitor all BMR rental units to ensure that all BMR rental obligations are being met at each property and that the rents do not exceed the maximum allowable for each respective unit.
4. Maintain contact with site staff and provide on-going training with property managers at BMR properties to ensure compliance with the CITYs BMR program.
5. AH staff calculates annual rent increases based on CPI and provides Developers & BMR site staff with updated move in income limits and rents based on published HCD Income limits.

#### **TASK 4 – STANFORD WEST BMR UNITS**

1. Continue to provide on-going training to site managers and staff to ensure compliance with the CITYs BMR program.
2. Receive quarterly reports from site managers and reviews best practices at the site level as it relates to waitlist management and tenant selection to ensure compliance with the BMR program.
3. Perform initial certification reviews, re-certification interviews, obtain relevant income and asset documents, complete income calculations and determine continued eligibility of all BMR units to assure compliance with the BMR program.





**EXHIBIT B****SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the Project Managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed (“NTP”) from the CITY.

<b>TASKS</b>	<b>SCHEDULE</b>
TASK 1 - PROGRAM OUTREACH	Daily/Ongoing
TASK 2 - OWNERSHIP PROGRAM	Daily/Ongoing
TASK 3 - RENTAL PROGRAM	Daily/Ongoing
TASK 4 – STANFORD WEST BMR UNITS	Daily/Ongoing

*(Version 1 - use for task-based compensation)*

### EXHIBIT C COMPENSATION

CITY agrees to compensate CONSULTANT for Services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth below.

CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below, provided that the total compensation for the Services, including any specified reimbursable expenses, and the total compensation for Additional Services (if any, per Section 4 of the Agreement) do not exceed the amounts set forth in Section 4 of this Agreement.

CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

TASKS	Fiscal Year 2024 AMOUNT	Fiscal Year 2025 AMOUNT
TASK 1 - PROGRAM OUTREACH	\$23,532.70	\$23,532.70
TASK 2 - OWNERSHIP PROGRAM	\$37,081.83	\$37,081.83
TASK 3 - RENTAL PROGRAM	\$85,573.46	\$85,573.46
TASK 4 – STANFORD WEST BMR UNITS	\$32,090.05	\$32,090.05
Sub-total for Services		
Reimbursable Expenses		
<b>Total Compensation</b>	<b>\$178,278.05</b>	<b>\$178,278.05</b>
Total Not to Exceed (Fiscal Years 2024 + 2025)		<b>\$356,556.10</b>

### **REIMBURSABLE EXPENSES**

CONSULTANT'S ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder.

Reimbursable expenses, if any are specified as reimbursable under this section, will be reimbursed at actual cost. The expenses (by type, e.g. travel) for which CONSULTANT will be reimbursed are: **NONE** up to the not-to-exceed amount of: **\$0.00**.

**EXHIBIT C-1**  
**SCHEDULE OF RATES**

CONSULTANT's schedule of rates is as follows:

<b>POSITION</b>	<b>RATE</b>
President & CEO	\$300/hour
Chief Financial Officer	\$165/hour
Program Director	\$175/hour
BMR Administrator/Manager	\$135/hour
Accounts Payable/Staff Accountant	\$100/hour
Program Assistant	\$95/hour

## EXHIBIT D INSURANCE REQUIREMENTS

CONSULTANTS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER’S COMPENSATION EMPLOYER’S LIABILITY	STATUTORY STATUTORY	STATUTORY	STATUTORY
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONSULTANT AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT'S AGREEMENT TO INDEMNIFY CITY.

II. THE CONSULTANT MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?companyid=25569>

III. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO ADDITIONAL INSUREDS:

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE FILED WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:**

<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>

**OR**

[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET\\_BIDS\\_HOW\\_TO.ASP](HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP)