



# City of Palo Alto

## City Council Staff Report

(ID # 10144)

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**Report Type: Consent Calendar**

**Meeting Date: 6/17/2019**

**Summary Title: Approve BMR Administration Contract**

**Title: Approval of Contract Number C19174797 With Palo Alto Housing Corporation for the Provision of Below Market Rate (BMR) Administration Services for \$290,000 Over a Two-Year Period**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Staff recommends that the City Council approve and authorize the City Manager or his designee to execute the attached contract C19174797 with Palo Alto Housing Corporation (PAHC) for administration and consulting services in the amount of \$290,000 for administration of the City's Below Market Rate (BMR) housing program for two years.

### **Executive Summary**

The City of Palo Alto released a Request for Proposals (RFP) for administration of the City's BMR housing program in April 2019 and PAHC and Hello Housing were two proposals received. PAHC has been administering the City's BMR housing program for over 40 years and ultimately, given the budget and history, under the terms of the proposed agreement, PAHC has been chosen to continue this role for another two years, from July 1, 2019 to June 30, 2021.

### **Background**

Palo Alto adopted one of the nation's first inclusionary zoning policies. It required that all residential development include ten percent of the units as Below Market Rate (BMR) units. In 1972, the policy required a mix of cost and type of housing in residential planned unit developments. In 1973, the City Council expanded the policy to all new residential developments. In 1974, anticipating the sale of BMR units in several developments, the City contracted with the Palo Alto Housing Corporation to administer the City's BMR Program. Since the inception of the program in 1974, the BMR administration has been funded by the Residential Housing Fund.

Under contract to the City, Palo Alto Housing Corporation (PAHC) has administered the BMR housing program since its inception in the mid-1970s. Examples of some of the services provided by PAHC include: administering the sale and re-sale of new and existing BMR owner units; maintaining the home purchase waiting list; monitoring occupancy of BMR rental units; providing advice and consultation to the City regarding negotiations of BMR agreements with developers; and addressing special issues related to the program. Most of PAHC's workload is involved with the home ownership component of the BMR program.

While PAHC performs most tasks required for the ongoing administration of the home ownership and rental components of the BMR program, planning staff also devotes considerable time to the BMR program, primarily on BMR negotiations and agreements and program improvements. City real property staff handles maintenance evaluation and the determination of credits for capital improvements when units come up for resale.

## **Discussion**

The term of the City's current agreement with PAHC is coming to an end on June 30, 2019. As a result, the City released an RFP for BMR Administration on April 10, 2019 anticipating the end of the two-year contract. The RFP released in April 2019 is for the next two years, starting on July 1, 2019 and ending in June 30, 2021. The City received two responses which included PAHC and Hello Housing. Hello Housing's bid came over the City's budget for BMR administration currently allocated in the Residential Housing Fund. Hello Housing's bid was \$268,081 in Year 1 of the contract and another \$192,248 in Year 2, for a total of \$460,329. PAHC proposes to continue their work on BMR Administration for the next two years at a cost not to exceed \$290,000. With the selection of PAHC, administration of the program will continue uninterrupted.

Palo Alto Housing Corporation has maintained the City's BMR program since the 1970s and has maintained and annually updated a waiting list of interested potential buyers of BMR units. There are currently 246 below market rate ownership units and 458 below market rate rental units in the program.

PAHC coordinates the sale of both newly built BMR units and the resale of existing units. Sales activities include: establishing the resale price; marketing units to the waiting list; scheduling open houses; qualifying and selecting the buyers; coordinating the transaction between the buyer, seller, lender and escrow; and explaining the requirements of the BMR deed restrictions. PAHC has maintained a database on all units and kept statistics on the number and characteristics of the households served by the program. The owner BMR units require periodic monitoring of occupancy and title, which PAHC handles in cooperation with planning staff and the City Attorney's Office. Monitoring activities include reviewing online assessor's

records to detect transfers in title or ownership and an annual self-certification letter to owners verifying owner occupancy and to remind them of program rules and to provide updates on procedural changes. When a violation of a deed restriction is discovered, PAHC undertakes initial attempts to remedy the situation. More complex enforcement matters are referred to planning staff or to the City Attorney (if legal action is required).

Information workshops for prospective buyers on the waiting list are conducted quarterly by PAHC together with housing counseling staff from Project Sentinel. These workshops focus on preparation for homeownership, understanding credit and mortgage financing and the rules of the BMR program. The workshops have been well received, with about 100 persons attending each year.

PAHC collects and reviews applicants' certification documentation to determine eligibility under the program rules. They also conduct recertification of existing tenants and monitor each complex's waiting list and tenant selection process.

### **Resource Impact**

The administration of the BMR program has historically been funded from the Residential Housing Fund, which is a special revenue fund created to support all types of affordable housing programs. The amount needed for the first year of this contract is included in the Contracts budget of the Residential Housing Fund in the Fiscal Year 2020 Proposed Operating budget. Staff will include funding for the second year in the Proposed Budget for Fiscal Year 2021. No additional funding is needed for this action.

### **Policy Implications**

The recommendation in this staff report does not represent any change to City policies. Implementation of this Agreement is consistent with the City's Housing Element and various housing policies that support the provision of affordable housing and a variety of housing opportunities.

### **Environmental**

The approval of an agreement for administrative and consulting services is not an action subject to environmental review under the California Environmental Quality Act.

#### **Attachments:**

**Attachment A: Palo Alto Housing BMR Contract #C19174797 (PDF)**

**CITY OF PALO ALTO CONTRACT NO. C19174797  
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND  
PALO ALTO HOUSING CORPORATION FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this 1st day of July, 2019, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and PALO ALTO HOUSING CORPORATION, a California corporation, located at 2595 E. Bayshore, Suite 200, Palo Alto, California, 94303 (“CONSULTANT”).

**RECITALS**

The following recitals are a substantive portion of this Agreement.

A. CITY intends to administer the City's Below Market Rate (BMR) housing program (“Project”) and desires to engage a consultant to provide services in connection with the Project (“Services”).

B. CONSULTANT has represented that it has 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”, attached to and made a part of this Agreement.

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

**AGREEMENT**

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described at 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.

**SECTION 2. TERM.**

The term of this Agreement shall be from the date of its full execution through June 30, 2021 unless terminated earlier pursuant to Section 19 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”, attached to and made a part of this Agreement. 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 described in Exhibit “A” (“Basic Services”), and reimbursable expenses, shall not exceed Two Hundred Ninety Thousand Dollars (\$290,000.00). Total CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. The applicable rates and schedule of payment are set out at Exhibit “C-1”, entitled “HOURLY RATE SCHEDULE,” which is attached to and made a part of this Agreement. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit “A”.

**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit quarterly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing 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 payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses 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 subconsultants, if permitted, 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 of the 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. 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 ten percent (10%) of CITY's stated construction budget, 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.** It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY.

**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 consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

**SECTION 12. SUBCONTRACTING.** CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign Georgina Mascarenhas to have supervisory responsibility for the performance, progress, and execution of the Services and Lauren Bigelow to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director 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 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 Project or a threat to the safety of persons or property.

CITY's project manager is Hang Huynh, Planning & Community Environment Department, 250 Hamilton Avenue, Palo Alto, CA 94303, Telephone: (650) 329-2493. The 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.** Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement 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 pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials 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 work.

**SECTION 15. AUDITS.** CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

**SECTION 16. INDEMNITY.**

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, 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 attorneys 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 Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

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.** The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

**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". 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. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be



paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving 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 which are of direct and immediate benefit to CITY as such determination may be 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, 19.4, 20, and 25.

19.5. 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.

**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 director  
at the address of CONSULTANT recited above

**SECTION 21. CONFLICT OF INTEREST.**

21.1. In accepting 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 subconsultants, contractors or persons 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.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

**SECTION 22. NONDISCRIMINATION.** As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, 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.

**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, incorporated by reference and may be 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 CCONSULTANT 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 Division'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 it may be 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**

25.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. 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.** CONSULTANT is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7 if the contract is not a public works contract, if the contract does not include a public works construction project of more than \$25,000, or the contract does not include a public works alteration, demolition, repair, or maintenance (collectively, ‘improvement’) project of more than \$15,000.

26.2 CONSULTANT shall comply with the requirements of Exhibit “E” for any contract for public works construction, alteration, demolition, repair or maintenance.

**SECTION 27. MISCELLANEOUS PROVISIONS.**

27.1. This Agreement will be governed by the laws of the State of California.

27.2. 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.

27.3. 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.

27.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

27.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

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

27.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

27.8 In the event of a conflict between the terms of this Agreement and the exhibits hereto or CONSULTANT’s proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONSULTANT’s proposal, the exhibits shall

control.

27.9 If, pursuant to this contract with CONSULTANT, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident (“Personal Information”), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City’s express written consent.

27.10 All unchecked boxes do not apply to this agreement.

27.11 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

27.12 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement

**CONTRACT No. C19174797 SIGNATURE PAGE**

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

**CITY OF PALO ALTO**

**PALO ALTO HOUSING CORPORATION**

DocuSigned by:  
*Randal R. Tsuda*  
749E6A5E5F9C4B8...  
Randal R. Tsuda

President & Chief Executive Officer

APPROVED AS TO FORM:

DocuSigned by:  
*Quinsia Ma*  
848B921BFD2140E...  
Quinsia Ma

Chief Financial Officer

**Attachments:**

- EXHIBIT "A": SCOPE OF SERVICES
- EXHIBIT "B": SCHEDULE OF PERFORMANCE
- EXHIBIT "C": COMPENSATION
- EXHIBIT "C-1": SCHEDULE OF RATES
- EXHIBIT "D": INSURANCE REQUIREMENTS

## **EXHIBIT "A"** **SCOPE OF SERVICES**

CONSULTANT shall administer the CITY'S Below Market Rate (BMR) housing program in compliance with CITY policy, guidelines, applicable deed restrictions, BMR Program Procedures Manual and in a manner which increases affordable housing opportunities for low- and moderate-income households.

### **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.

### **Administration:**

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 owners 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 PAH's 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 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 the new BMR Ordinance.
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

- b. 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
  - c. Contact information for current BMR owners with mailing labels and, when available, telephone numbers and e-mail addresses.
- 15.

**RENTAL PROGRAMS:**

- 16. 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.
- 17. 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. CONSULTANT shall notify site managers of the results of the tenant recertification immediately following the completion of the calculations.
- 18. Review and approve all new BMR rental move-in files prior to occupation of a BMR unit. Monitor all BMR rental units quarterly 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.
- 19. Maintain contact with site staff and provide on-going training with property managers at BMR properties to ensure compliance with the CITY's BMR program.

**Stanford West BMR Units:**

- 20. Continue to provide on-going training to site managers and staff to ensure compliance with the CITY's BMR program.
- 21. 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.



22. Conduct an annual sample file audit of tenant selections, eligibility and income certifications for ten percent 10% of the BMR households to assure compliance with the BMR program.
23. If appropriate, make recommendations to CITY for more comprehensive monitoring.

**EXHIBIT "B"**  
**SCHEDULE OF PERFORMANCE**  
(Not Applicable)

## **EXHIBIT "C" COMPENSATION**

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement based on the hourly rate schedule attached as Exhibit C-1.

The compensation to be paid to CONSULTANT under this Agreement for all services, additional services, and reimbursable expenses shall not exceed the amount(s) stated in Section 4 of this Agreement. CONSULTANT agrees to complete all Services and Additional Services, including reimbursable expenses, 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.

### **REIMBURSABLE EXPENSES**

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

Postage, BMR Seminar refreshments, Supplies, Liability Insurance, etc. (includes \$6,095 credit for annual application update fee of \$15 each)

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$1000.00 shall be approved in advance by the CITY's project manager.

### **ADDITIONAL SERVICES**

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expenses, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.

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

PAH Costs and Rates Sheet

Scope	Labor Categories	Est. Hours	Hourly Rate	TOTAL COST
General Administration	BMR Administrator	455	\$115	\$52,325
	Program Director	260	\$140	\$36,400
	Program Assistant	375	\$85	\$31,875
<b>Total not-to-exceed, task 1</b>				\$120,600
Billing, Budget	Chief Financial Officer	5	\$140	\$700
	Accounts Payable/Staff Accountant	10	\$85	\$850
<b>Total not-to-exceed, task 2</b>				\$1,550
Administration, Policy Review, Consultation	President & CEO	3	\$275	\$825
<b>Total not-to-exceed, task 3</b>				\$825
<b>REIMBURSABLE HARD COSTS</b>	Postage, BMR Seminar refreshments, Supplies, liability insurance, etc. (includes \$4,395 credit for annual application update fee of \$15 each X 293 current WL applicants)			\$18,605
<b>(Tasks 1-3 + Reimbursable costs)</b>				\$141,580
<b>Total annual not-to-exceed</b>	Includes \$3000.00 in unexpected costs, as needed, associated with BMR rental site manager training, price calculations for assessor's office, Reasonable Accommodation requests, etc.			\$144,580

**Compensation per year is Not to Exceed \$145,000.00**

## EXHIBIT "D" INSURANCE REQUIREMENTS

CONTRACTORS 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, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	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> CONTRACTOR, 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 CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
  - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
  - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTACTOR 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 INSURED"
  - 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 INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS 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 INSUREDS, 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.

**VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES 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)