

RESOLUTION NO. 23-76**Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into An Agreement By And Between The County Of Alameda And The City Of Emeryville For The Purpose Of Carrying Out The Community Development Block Grant Program For Fiscal Year 2023-24**

WHEREAS, the City of Emeryville ("City") desires to participate in the Community Development Block Grant ("CDBG") Program under the Housing and Community Development Act of 1974; and

WHEREAS, the City currently participates in the CDBG Program as an Urban County city, per the Cooperation Agreement by and between the City and the County of Alameda ("County"), dated July 1, 2020; and

WHEREAS, the County has determined that the City's share of CDBG funds for Fiscal Year 2023-24 is \$83,560; and

WHEREAS, the parties desire that the County continue administering the entirety of the City's CDBG Program and expending the City's CDBG funds for eligible activities on behalf of the City; and

WHEREAS, an annual agreement with the County has been prepared and specifies the City's CDBG allocation for the 2023-24 Fiscal Year and the purpose of said funds; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to enter into said agreement, in substantial form as attached hereto as Exhibit A.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 20, 2023, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Welch and Council Members Kaur, Mourra and Priforce
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

John Bauters

C7389B49E2C9458...

MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

April Richardson

9AF9F67CE0284D8...

CITY CLERK

DocuSigned by:

Christie Crowl

5F6E58613741458...

SPECIAL COUNSEL

AGREEMENT BY AND BETWEEN
CITY OF EMERYVILLE
AND
THE COUNTY OF ALAMEDA

THIS AGREEMENT is made and entered into this 11th day of July 2023, by and between the County of Alameda, a body corporate and politic of the State of California, (hereinafter referred to as "County"), and the CITY OF EMERYVILLE, a body corporate and politic of the State of California, located in the County of Alameda, State of California, (hereafter referred to as "City").

WHEREAS, the County has entered into a Grant Agreement with the United States Department of Housing and Urban Development (HUD), for a Community Development Block Grant (CDBG) under the Housing and Community Act of 1974, said funds to be used for Community Development Block Grant Programs and its eligible activities; and

WHEREAS, the City is eligible for an entitlement of CDBG funds based on its participation in the Alameda County Urban County; and

WHEREAS, the County has allocated CDBG funds to the City based on the City's participation in the Urban County; and

WHEREAS, the activities of the City under this Agreement with the County shall be governed by the conditions of the Grant Agreement between the County and the United States Department of Housing and Urban Development; and

WHEREAS, the parties desire that the County retain that portion of the City's allocation providing for Minor Home Repair Program, which will be administered by Alameda County Healthy Homes Department; and

WHEREAS, the Parties have reviewed City's proposed projects and have determined that the projects are CDBG-eligible projects in accordance with HUD regulations and the conditions of the CDBG Grant Agreement;

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE PROMISES HEREINAFTER MADE, COUNTY AND CITY DO MUTUALLY AGREE AS FOLLOWS:

I. STATEMENT OF WORK AND COMPENSATION

- A. City shall perform or arrange for the performance of the work under this Agreement in the manner and time provided herein and in accordance with: the budget; the scope of work and any specifications and drawings; and all related documents and provisions attached hereto as Exhibit A and incorporated herein by reference.
- B. The maximum amount of fiscal year 2023 CDBG funds allocated to City pursuant to this Agreement to perform the work described in Exhibit A is eighty-three

thousand, five hundred sixty dollars (\$83,560). Of this amount twenty-seven thousand, three hundred eighty-four dollars (\$27,384) in Minor Home Repair Program funds will be retained by the County to reimburse the County for its services in providing minor home repair services set forth in Exhibit A. In the event that HUD reduces the Urban County CDBG allocation, the City's allocation will be reduced proportionately.

II. COMMENCEMENT AND COMPLETION REQUIREMENTS

- A. This Agreement shall start on July 1, 2023, and be in effect until June 30, 2025, or until all fiscal year 2023 Urban County CDBG funds allocated to City are disbursed to and expended by City, or for the duration of any regulatory agreement or contract executed in conjunction with a project financed with fiscal year 2023 CDBG funds, or when all of the contract terms have been completed, whichever shall first occur.
- B. It shall be the responsibility of the City to coordinate and schedule the work to be performed so that commencement and completion will take place in accordance with the provisions of this Agreement. The County may extend the time for completion of the work to be performed under this Agreement in writing, if it determines that delay in the progress of work is not attributable to the negligence of the City and that such delay was due to causes beyond the control of the City, and if such extension will not cause the County to be out of compliance with CDBG rules and regulations for timely commitment and expenditure of funds.
- C. Any time extension granted to the City to enable the City to complete the work shall not constitute a waiver of rights the County may have under this Agreement.
- D. Should the City not complete the work by the scheduled date or by an extended date, granted by the County in writing, pursuant to previously stated conditions, the County shall be released from all conditions of this Agreement.
- E. Upon completion of performance under this Agreement and a determination of final costs, City shall submit to the County a certificate of completion for construction projects and a requisition for final payment for service projects, unless otherwise provided in this Agreement.
- F. As a part of this Agreement, City will provide the County with the Certificate(s) of Insurance as outlined in Exhibit B.

III. SUBCONTRACTS

- A. Any subcontract funding under this Agreement shall be submitted to County for review and approval prior to its execution.
- B. In the event subcontractor is a private non-profit or neighborhood-based non-profit organization, or a local development or small business investment corporation,

contractor is required to comply with the procurement procedures of the Office of Management and Budget (OMB) at Title 2 of the Code of Federal Regulations, Part 200 (2 CFR Part 200) (incorporated herein by reference) for the procurement of supplies and services in connection with activities funded under this Agreement.

- C. Any subcontract funded under this Agreement shall be subject to the terms and conditions of this Agreement. Contractor shall inform County in writing of any subcontracts entered into with these funds, the amount, the scope of work, any other information the County may from time to time require.

IV. BUDGET

- A. Any requested modification to the Budget attached to this Agreement and incorporated as part of this Agreement, shall be reviewed and approved by the Alameda County Housing Director on behalf of the County. Any budget modifications require the prior written approval of Alameda County Housing Director on behalf of the County. Budget modifications shall not alter: 1) The basic scope of services (Exhibit A) required to be performed under this Agreement; 2) the time period for the services to be performed under this Agreement; and; 3) the total amount of the authorized budget of this Agreement (Exhibit A), subject to future amendments as approved by the Alameda County Housing Director. Any of the cost categories shown in the Agreement Budget, except administration, may be exceeded by ten percent of the indicated figure, provided that the total approved amount of allowable costs is not exceeded and stays under the 15% Urban County Public Services cap.
- B. City's expenditure of FY23 funds will be monitored on a project-by-project basis, rather than by the Urban County as a whole. City projects that do not spend down funds in any single quarter must provide a written explanation to County as to why the project is stalled/delayed and when it is expected that the project will start to expend funds.

V. RECORDS AND REPORTS

- A. All original documents prepared by City in connection with the work to be performed under this Agreement shall be the property of the County.
- B. City's records shall be made available for review by the County prior to the release of funds. City shall be responsible for maintaining all records pertaining to this Agreement, including subcontracts and expenditures, and all other financial and property records in conformance with 2 CFR Part 200.
- C. Records must be kept accurate and up-to-date. Failure of City to comply with this provision could result in termination of this Agreement or City's repayment of funds previously awarded under this Agreement.

VI. PROGRAM MONITORING AND EVALUATION

- A. City shall be monitored and evaluated in terms of its effectiveness and timely compliance with the provisions of this Agreement, HUD regulations, and conditions of the Grant Agreement between the County and HUD, and the effective and efficient achievement of the Program Objectives.
- B. City shall undertake continuous quantitative and qualitative evaluation of the scope of services as specified in this Agreement and shall make quarterly written reports to County.
 - 1. The quarterly written reports shall be submitted in the format approved and distributed by the County.
 - 2. The quarterly report shall be due on the fifteenth day of the month immediately following the report quarter, except for the end of the program year report which is due within thirty days.
- C. The County shall have ultimate responsibility for project monitoring oversight and evaluation, to assist City in complying with the scope and contents of this Agreement, and to provide management information which will assist the County's policy and decision-making and managers.
- D. The City shall follow audit requirements of the Single Audit Act and 2 CFR Part 200.

VII. AUDIT REPORT

- A. In addition to the reporting requirements listed in Section VI (Program Reporting and Evaluation), the City shall commission an independent auditing firm to prepare and file with the City an annual audit report for each year during the term of this Agreement. The City's failure to submit the audit report may result in the termination of the Agreement.
- B. The audit report is to be submitted to the County by March 30th of each year during the term of this Agreement. The audit report should state that an audit was made in accordance with the provisions of 2 CFR Part 200. The City will use the audit report to determine whether:
 - i. The financial statements of the City present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles.
 - ii. The City has (i) an internal control structure to provide reasonable assurance that the City is managing Federal awards in compliance with applicable

laws and regulations, and (ii) controls that ensure compliance with laws and regulations that could have material impact in the City's financial statements.

- iii. The City has complied with laws and regulations for the CDBG Program that may have a direct and material effect on the City's financial statements.
- iv. The City shall also submit any internal control monitoring (or audit) conducted during the term of this Agreement to the County. The City shall require Providers with which the City contracts in connection with this Agreement to meet the same audit requirements set forth in this Section VI (D).

VIII. PROGRAM INCOME

- A. Program income shall be recorded as part of the financial transactions of the grant program and disbursed in accordance with 2 CFR Part 200.
- B. Program income received by City shall be returned to County for future application to City projects.
- C. Program income from Urban County program activities undertaken by or within City which thereafter terminates its participation in the Urban County shall continue to be program income of the County. County may transfer the program income to City, upon its termination of Urban County participation, provided that City has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

IX. UNIFORM ADMINISTRATIVE REQUIREMENTS

- A. City shall comply with Uniform Administrative Requirements as described in Federal Regulations, Section 570.502 as applicable to governmental entities.
- B. City shall comply with Executive Order 13166 to improve access to services for persons with Limited English Proficiency (LEP) including developing a Language Access Plan.

X. RELIGIOUS ACTIVITY PROHIBITION

City may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing, as a part of the program or services funded by this Agreement.

XI. REVERSION OF ASSETS

- A. Upon the expiration of this Agreement, City shall transfer to County any CDBG

funds on hand at time of expiration and any accounts receivable attributable to the use of CDBG funds.

- B. Real property in excess of \$25,000, obtained in whole or in part with CDBG funds must be used to meet one of the national objectives for a minimum of ten years after the expiration of this Agreement or disposed of in a manner that results in County being reimbursed at fair market value less value attributable to non-CDBG expenditures.

XII. OTHER PROGRAM REQUIREMENTS

- A. City certifies that it will carry out each activity in compliance with all Federal laws and regulations described in 24 CFR, Part 570, Sub-part K (570.600-570.612) and related to a) Non-discrimination, b) Fair Housing, c) Labor Standards, d) Environmental Standards, e) National Flood Insurance Program, f) Relocation and Acquisition, g) Employment and Contracting Opportunities, h) Lead-based paint, i) Use of Debarred, Suspended or Ineligible Contractors or Sub-recipients, j) Uniform Administrative Requirements and Cost Principles, k) Conflict of Interest, and l) Displacement.
- B. Activities and programs under this Agreement shall be governed by the policies and procedures of the Alameda County Urban County or as directed by the County as grantee in order to ensure that compliance with all applicable laws and regulations.

XIII. TERMINATION OF THIS AGREEMENT

County may terminate this Agreement in whole or in part immediately for cause, which shall include as example but not as a limitation:

- A. Failure, for any reason, of City to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with City, State and Federal laws and regulations and applicable directives;
- B. Failure to meet the performance standards contained in other sections of this Agreement;
- C. Improper use or reporting of funds provided under this Agreement; and
- D. Suspension or termination by HUD of the grant to the County under which Agreement is made, or the portion thereof delegated by this Agreement.
- E. Any and all notices, writings, correspondences, etc., as required by this Agreement shall be directed to the City and County as follows:

City
City Manager
City of Emeryville
1333 Park Avenue
Emeryville CA, 94608

County
Housing Director
Alameda County HCD
224 W. Winton Avenue, Room 108
Hayward, CA 94544

XIV. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, City shall hold harmless, defend and indemnify the County, its Board of Supervisors, officers, employees and agents (collectively “Indemnitees”) from and against any and all claims, losses, damages, liabilities or expenses, including reasonable attorney fees, incurred in the defense thereof, for the death or injury to any person or persons (including employees of City or County) or damage of any property (including property of City or County) which arises out of or is in any way connected with performance of this agreement (collectively “Liabilities”) except where such Liabilities are proximately caused solely by the negligence or willful misconduct of any Indemnitee.

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY OF EMERYVILLE

COUNTY OF ALAMEDA

Approved as to form:

By: 
 DocuSigned by: 2C934D02DB55467...
 City Attorney

By: _____
 President, Board of Supervisors

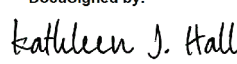
Date: 06/09/2023

Date: _____

By: _____
 City Manager

Approved as to form:
 Donna R. Ziegler, County Counsel

Date: _____

By: 
 DocuSigned by: DA808277C6F24CB...
 Kathleen J. Hall,
 Deputy County Counsel

Attest: _____
 City Clerk

Date: _____

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

AGREEMENT BY AND BETWEEN
CITY OF EMERYVILLE
AND
THE COUNTY OF ALAMEDA

EXHIBIT A

05A – Public Service – Senior Services	
Meals on Wheels will deliver meals to 17 low and very low-income seniors	\$20,000
Unallocated – project to be determined later.	\$29,576
14A Rehabilitation - Single Unit Residential	
Minor Home Repair Program that promotes the maintenance of homes for the benefit of low-income Alameda County residents. County shall retain \$6,064.48 for services to be performed by Alameda County Healthy Homes Department for project delivery costs, including staff costs specific to the project.	\$27,384
21A Administration	
Provide overall CDBG program administration. (Eligible costs defined in HUD CDBG regulations.)	\$6,600
TOTAL - CITY OF EMERYVILLE	\$83,560
<i>Anticipated Program Income*</i>	\$0.00

** Based on an estimate of prior years' program income received; only actual program income received will be available to the City for its Revolving Loan Fund (Housing Rehabilitation Programs).*

EXHIBIT A1
ALAMEDA COUNTY HOUSING AND COMMUNITY DEVELOPMENT
AND
CITY OF EMERYVILLE

CFDA number:

■ ☐ CDBG 14.218

CFDA Title: Community Development Block Grants/Entitlement Funds

Name of Federal Agency: Housing and Community Development Department (HUD)

Subrecipient Unique Entity Identification: 021116418

Federal Award Date of award to HCD by HUD:

Federal Award Identification Number: B23-UC-06-0001

EXHIBIT B**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the County, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto or Hired and Non-Owned Autos Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) As required by State of California	WC: Statutory Limits EL: No less than \$1,000,000 per accident for bodily injury or disease
D	Endorsements and Conditions: ADDITIONAL INSURED: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the County. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". CANCELLATION OF INSURANCE: Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the provisions of this Agreement and this Exhibit C, in forms satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.	