

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

THIS AGREEMENT is made and entered into this 1st day of October, 2016, by and between the County of Alameda (hereinafter referred to as "County"), and the City of Emeryville, 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 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 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, in past years, the County and the City have shared the role of administering the City's CDBG program and funds; and

WHEREAS, the parties desire that the County begin 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, the parties desire that the County retain that portion of the City's allocation providing for Rental Rehabilitation Programs, which will be administrated by Alameda County Housing and Community Department; and

WHEREAS, the parties were party to a prior agreement dated July 1, 2014 which provided, at Paragraph II.A., "This Agreement shall be in effect until June 30, 2016 or until all fiscal year 2014 Urban County CDBG funds allocated to City are disbursed to City, or for the duration of any regulatory agreement or contract executed in conjunction with a project financed with fiscal year 2014 CDBG funds, or when all of the contract terms have been completed whichever shall first occur; and

WHEREAS, the parties desire to execute a new agreement to ensure that the remainder of fiscal year 2014 funds not distributed pursuant to the 2014 agreement may be disbursed after June 30, 2016; and

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. On behalf of the City, the County will 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 2014 CDBG funds covered by this agreement shall be \$54,094.68 (\$36,854.74 in entitlement funds and \$17,239.94 in revolving loan funds). This is the amount of City's fiscal year 2014 allocation remaining after a portion of those funds were expended pursuant to the parties' prior agreement dated July 1, 2014. The maximum amount of fiscal year 2014 funds collectively covered by this agreement and the 2014 agreement remain unchanged at \$62,266. In no event shall this agreement be deemed to augment the maximum allocation to City or the amount that may be expended by City or on the City's behalf. In the event that HUD reduces the Urban County CDBG allocation, the City's allocation will be reduced proportionately. Under no circumstances will the County be required to expend more than the maximum contract amount in connection with providing services pursuant to this Agreement.

II. COMMENCEMENT AND COMPLETION REQUIREMENTS

- A. This Agreement shall be in effect until June 30, 2017 or until all fiscal year 2014 Urban County CDBG funds allocated to the City are disbursed to and expended, or for the duration of any regulatory agreement or contract executed in conjunction with a project financed with fiscal year 2014 CDBG funds, or when all of the contract terms have been completed whichever shall first occur.
- B. It shall be the responsibility of the County 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 parties may extend the time for completion of the work to be performed under this Agreement in writing, if the County determines that delay in the progress of work is not attributable to the negligence of the County or City and that such delay was due to causes beyond the control of the County, 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 enable the County to complete the work shall not constitute a waiver of rights the County may have under this Agreement.
- D. Upon completion of performance under this Agreement and a determination of final costs, County shall submit to the City a certificate of completion for any construction projects and a final statement outlining expenditures for service projects, unless otherwise provided in this Agreement.
- E. As a part of this Agreement, City will provide the County with a Certificate of Insurance as outlined in Exhibit B.

III. SUBCONTRACTS

- A. Any subcontract for funding under this Agreement shall be submitted to City 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, procurement must comply with 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. The subcontracting party shall inform the other party in writing of any subcontracts entered into with these funds, the amount, the scope of work, any other information the other party may from time to time require.

IV. BUDGET

- A. Any modification to the Budget attached to this Agreement and incorporated as part of this Agreement that is requested by one party, shall be reviewed and approved by the other party. 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 parties. 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. FY16 funds will be monitored on a project by project basis, rather than by the Urban County as a whole. Projects that do not spend down funds in each quarter must provide a written explanation 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 County in connection with the work to be performed under this Agreement shall be the property of the County. All original documents prepared by City in connection with the work to be performed under this Agreement shall be property of the City.
- B. Each party's records relating to this Agreement shall be made available for review by the other party upon request. The parties will maintain 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 will be kept accurate and up-to-date. Failure to comply with this provision could result in termination of this Agreement or County's repayment or withdrawal of funds previously awarded under this Agreement.

VI. PROGRAM MONITORING AND EVALUATION

- A. County shall monitor and evaluate programming in terms of effectiveness and timely compliance with the provisions of this Agreement and the effective and efficient achievement of the Program Objectives.

- B. County shall undertake continuous quantitative and qualitative evaluation of the Scope of Services as specified in this Agreement and shall make quarterly written reports to City.
1. The quarterly written reports shall be submitted in the format approved and distributed by the City.
 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 County shall follow audit requirements of the Single Audit Act and 2 CFR Part 200.
- E. AUDIT REPORT

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.

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:

1. The financial statements of the City present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles.
2. 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.
3. The City had complied with laws and regulations for the CDBG Program that may have a direct and material effect on the City's financial statements.

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 (E).

VII. 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. Any 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.

VIII. UNIFORM ADMINISTRATIVE REQUIREMENTS

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

IX. RELIGIOUS ACTIVITY PROHIBITION

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of this Agreement.

X. 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.

XI. OTHER PROGRAM REQUIREMENTS

- A. The parties certify that they 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 Principals, 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.

XII. TERMINATION OF THIS AGREEMENT

City or 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 or County to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with City, County, State and Federal laws ordinances 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 Street
Emeryville, CA 94608

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

XIII. 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 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 Indemnatee.

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

* * * * *

CITY OF EMERYVILLE

COUNTY OF ALAMEDA

Approved as to form:

Approved as to form: Donna R. Ziegler
County Counsel

By: 
City Attorney

By: _____
Heather M. Littlejohn
Deputy County Counsel

Date: 8-16-14

Date: _____

By: _____
City Manager

By: _____
President, Board of Supervisors

Attest: _____
City Clerk

Date: _____

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

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AND
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EXHIBIT A

The County will administer and manage CDBG activities to be conducted for the City, which activities will be funded by City's allocated CDBG funds for FY2014. The activities and allocated funding subject to this Agreement are set forth in more detail in the table below.

14B Rental Rehabilitation	
Rehabilitation of a multi-family rental building located in Emeryville.	\$43,826.68
TOTAL - CITY OF EMERYVILLE	\$43,826.68

** 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 B
COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, 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 insurance coverage, limits and endorsements:

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 is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Endorsements and Conditions: <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG20 38 04 13. 2. 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 claims-made basis shall be maintained during the entire term of the Agreement and until 3 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. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. 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. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived 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. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. 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. The additional insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> — 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 the ISO Form named above. — Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured." 7. CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The require certificate(s) and endorsements must be sent as set forth in the Notice provision. 	