

RESOLUTION NO. 18-48

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Professional Services Agreement With The Berkeley Food And Housing Project In An Amount Not To Exceed \$265,000 And Appropriating \$205,000 From The Affordable Housing Fund (Fund 299) To The Fiscal Year 2018-19 Economic Development And Housing Division Budget For Homeless Programs (Account 299-87420)

WHEREAS, homelessness and housing instability have wide-ranging negative impacts; and

WHEREAS, individuals or families who are experiencing homelessness, or at risk of becoming homeless, are often unable to reach their full potential at home, at work, at school, or in the community; and

WHEREAS, the high cost of housing in Alameda County increases cases of homelessness and presents a barrier to its prevention; and

WHEREAS, on May 1, 2018 the City Council adopted the updated City of Emeryville Homeless Strategy ("Homeless Strategy"); and

WHEREAS, in order to implement the objectives of the Homeless Strategy, the City requires assistance with homeless outreach, case management and support of the countywide homelessness Coordinated Entry System, administration of Rapid Re-Housing Services, and an Emerging Needs Fund; and

WHEREAS, Berkeley Food and Housing Project (BFHP) has submitted a proposal to provide such services for a total contract amount not to exceed \$265,000; and

WHEREAS, an appropriation of \$205,000 would provide sufficient funds for the proposed BFHP contract; now, therefore, be it

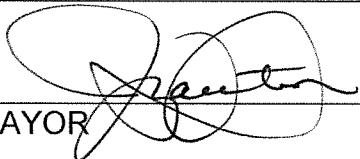
RESOLVED that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Professional Services Agreement between the City of Emeryville and the Berkeley Food and Housing Project, in substantial form as attached as Exhibit A to this Resolution, in an amount not to exceed \$265,000, and be it further

RESOLVED, that the City Council of the City of Emeryville hereby appropriates \$205,000 from the Affordable Housing Fund (Fund 299) to the Economic Development and Housing Division budget for Homeless Programs (Account Number 299-87420) for fiscal year 2018-19.

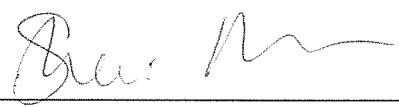


ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 15, 2018 by the following vote:

AYES:	<u>4</u>	<u>Mayor Bauters and Council Members Donahue, Martinez and Patz</u>
NOES:	<u>0</u>	<u></u>
ABSTAIN:	<u>0</u>	<u></u>
ABSENT:	<u>1</u>	<u>Vice Mayor Medina</u>

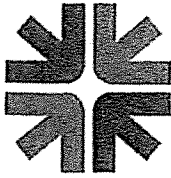

MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of this _____ day of _____, 2018, by and between THE CITY OF EMERYVILLE, a municipal corporation, ("City") and Berkeley Food and Housing Project (BFHP), ("Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT

WHEREAS, the City desires to provide services and activities for a City of Emeryville Homeless Outreach, Engagement and Housing Navigation Program as well as Rapid-Rehousing slots and an Emerging Needs Fund using a multi-faceted, multi-disciplinary, and integrated approach; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

WHEREAS, the City has determined that the Consultant is qualified by training and experience to render such services; and

WHEREAS, the Consultant desires to provide such services; and,

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete Project Description is described in Scope of Services, attached as Exhibit A.

1.2 Services

The services to be completed under this Agreement ("Services") are described in Exhibit A.

1.3 Schedule and Completion Date

The services to be provided by Consultant under this Agreement shall commence on July 1, 2018 and terminate on June 30, 2019.

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		EPW No.	

REV111716

Exhibit A

2. WORK CHANGES

2.1 City Rights to Change

The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

2.2 Additional Work Changes

Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.

2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 3.2 below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation for Services Performed

City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.

3.2 Total Compensation Amount

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed

TWO HUNDRED AND SIXTY-FIVE THOUSAND DOLLARS (\$265,000.00), except as outlined in Section 2.3 above. The compensation for Services performed shall be **as set forth in Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONSULTANT

4.1 Assignment of Agreement

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the City shall have no obligation to them.

4.2 Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant; any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

4.3 Independent Contractor

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

4.4 Insurance

4.4.1 REQUIREMENTS

The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

4.4.2 MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

- A. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
- B. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
- C. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- D. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

_____ (Consultant's Initials)

4.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

4.4.4 OTHER INSURANCE PROVISIONS

The policy is to contain, or be endorsed to contain, the following provisions:

A. General Liability and Automobile Liability Coverage

1. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as additional insured and is not acceptable.

2. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.

4. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
6. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
7. All endorsements to policies shall be executed by an authorized representative of the insurer.

B. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

C. All Coverages

Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

4.4.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

4.4.6 VERIFICATION OF COVERAGE

Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

4.4.7 SUBCONTRACTORS

Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

4.4.8 CLAIMS-MADE POLICIES

Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

4.5 Records, Reports and Audits

4.5.1 RECORDS

- A. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

4.5.2 REPORTS AND INFORMATION

Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

4.5.3 AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

4.6 Conflicts of Interest

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Consultant will immediately notify the City of such holding, interest or agreement in writing.

4.7 Confidentiality

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability.

4.9 Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 Key Personnel

All of the individuals listed in Exhibit A are necessary for the successful prosecution of the work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

4.11 Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, subject to increase annually on July 1st to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

4.14 Prevailing Wages

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to ensure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

4.14.1 HOURS OF LABOR

Eight hours' labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.

4.14.2 LABOR NON-DISCRIMINATION

Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.

4.14.3 PREVAILING WAGES

Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained online at www.dir.ca.gov. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4.14.4 PAYROLL RECORDS

Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

- A. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - 3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- C. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.

- F. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

4.14.5 APPRENTICES

Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

4.14.6 WORKERS' COMPENSATION

Pursuant to the requirements of section 1860 of the California Labor Code, Consultant will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Agreement, Consultant certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

4.14.7 EVENT OF DEFAULT

Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

5. TERMINATION

- A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.
- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

6. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

7. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

11. BUSINESS LICENSE

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work shall be exchanged between **Catherine Firpo** for the City and **Sharon Leyden** for the Consultant.

12.2 Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

CITY

CATHERINE FIRPO
HOUSING COORDINATOR
1333 Park Avenue
Emeryville, California 94608
Phone No.: (510) 596.4354
E-Mail: cfirpo@emeryville.org

CONSULTANT

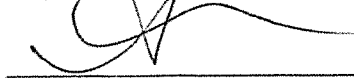
SHARON LEYDEN
DIRECTOR OF CLIENT SERVICES
1901 Fairview Street
Berkeley, CA 94703
Phone No.: (510) 318-6604
E-Mail: sleiden@bfhp.org

13. WAIVER OF AGREEMENT

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved As To Form:



Michael A. Guina, City Attorney

CITY OF EMERYVILLE

Dated:


_____, 2018

Carolyn Lehr, City Manager

CONSULTANT

Dated:

4/30, 2018

BY:  _____

ITS: Berkeley food + Housing Project.

The Berkeley Food and Housing Project (BFHP), (hereafter "Consultant") will provide services and activities for a City of Emeryville Homeless Outreach, Engagement and Housing Navigation Program as well as Rapid-Rehousing slots and an Emerging Needs Fund using a multi-faceted, multi-disciplinary, and integrated approach.

Staffing: The project will be staffed by one full time *Housing Navigator* and will be supervised by the agency's *Senior Coordinated Entry Systems Manager*. The agency's *Director of Coordinated Entry Systems* will provide program oversight, and act as the contract liaison with the City of Emeryville. The Housing Navigator will work a flexible schedule, in order to best connect with the homeless population.

Program Description/Services

The Housing Navigator will provide outreach and engagement, housing navigation, housing search/landlord relationship development, housing placement, and housing stabilization and retention services to homeless residents of Emeryville and to homeless families whose children attend the Emeryville School District. Each type of service is described in more detail below.

Outreach: The Housing Navigator will primarily utilize their time to conduct outreach to homeless persons throughout the City of Emeryville. The goal of outreach is engagement, relationship building and assessment to encourage participation in services and housing resolution. Engagement can be a long process and it can take many contacts with a homeless individual before the Housing Navigator may even be able to do an assessment. During this relationship and trust building process, the client chooses his/her level of engagement with staff and takes the lead in determining his/her initial needs and goals.

Each time the Housing Navigator engages a person, s/he will offer a Coordinated Entry Assessment (CES) assessment, any available options

Housing Stability Plan may include obtaining ID, the creation of a monthly household budget and assistance with financial planning, employment search, addressing poor credit and past evictions, managing mental health symptoms.

Referrals and Linkage to Other Service Providers:

Referrals to mainstream services which help people obtain and maintain housing are a top priority. These could include linking to resources for medical care, domestic violence services, drug use management and mental health. Additional priority areas are connecting clients to resources to assist them in increasing their income and with resources that can help address some of their tenancy barriers such as poor credit, or an eviction on their record.

Housing Search:

The Housing Navigators are the primary staff that will have contact with landlords. The Housing Navigators role is to locate units, build relationships with landlords, and work with the client on the move in process.

The Housing Navigators will provide a wide range of services directly related to establishing and maintaining housing stability. These include:

- Linking eligible clients to available move-in assistance and utilities subsidy programs.
- Discussion of housing options with the household
- Research of housing options and encouraging the participant household to research options themselves.
- Providing tools and instruction to participant households regarding how to present themselves favorably to landlords
- In the event that a prospective unit is identified, contacting landlord to arrange for the participant to see the unit.
- Negotiation and mediation with landlords around rents and tenant relationships

management services to locate an apartment, sign a lease, provide rental assistance, and then over the course of a year, phase out the rental assistance so the individual or family makes the rental payments themselves. There will be approximately 5-6 Rapid Re-Housing Slots available for clients identified by the Emeryville Housing Navigator as experiencing homelessness in Emeryville for this staff person to fill. BFHP will use an assessment tool developed by Alameda County, but tailored to identify Emeryville residents experiencing homelessness who may not qualify for other housing assistance.

Emerging Needs Fund

The City of Emeryville will fund an Emerging Needs Fund to cover immediate needs of people experiencing homelessness as well as address public health issues and emergencies related to homelessness. These funds will be allocated for needs such as security deposits, pest infestations, bed bug infestation replacement needs, vaccinations, mobile healthcare van stops, shelter slots, service incentives and similar items, to be administered by BFHP. Individuals will work directly to BFHP staff in order to access these funds (e.g. security deposits), they may be given out in the form of service incentives, or other service providers may apply for these funds to assist their clients who are experiencing homelessness in Emeryville that are not being served by BFHP. (eg: families through the Family Front Door). BFHP will administer the funds to Emeryville clients. BFHP will develop an Approval Request Form, approved by the City to be used on all expenditures that exceed \$300.

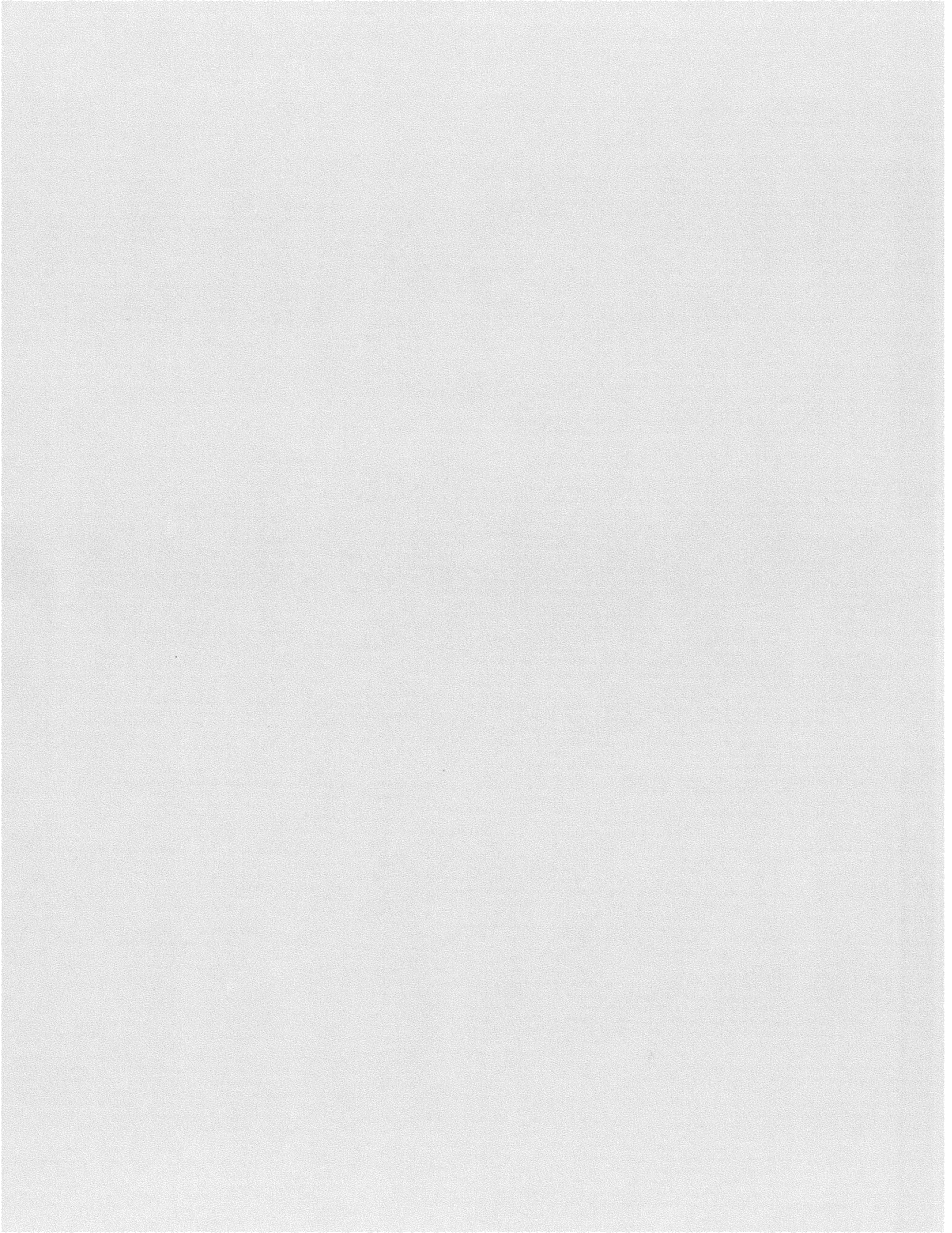
Reporting

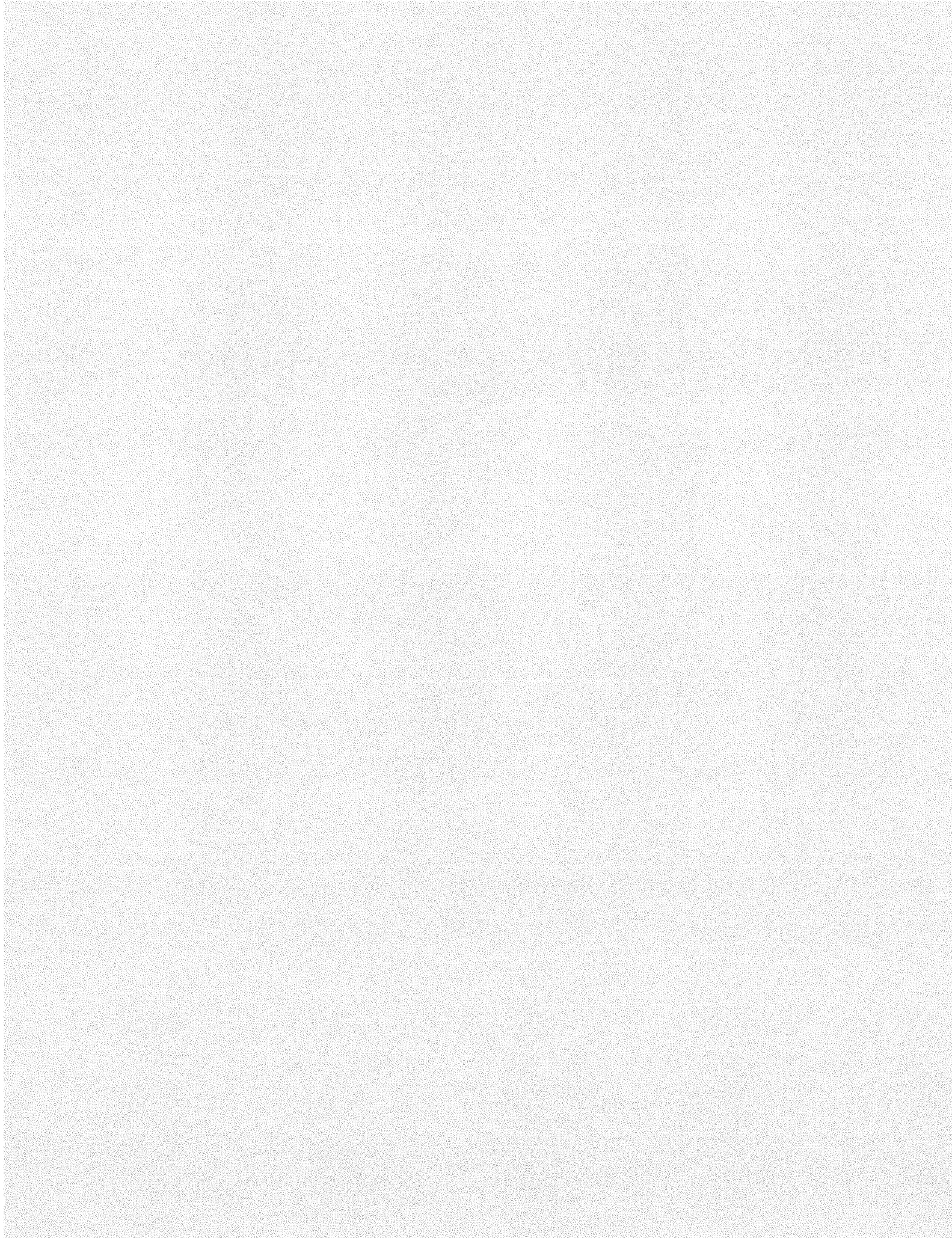
- BFHP will provide monthly program statistics and reporting to the City of Emeryville using a template to be determined but that includes case information related to clients who are eligible for the Emeryville Rapid Rehousing Funds and Emerging Needs Funds.

Staffing Detail:

Director of Coordinated Entry Systems: 0.05 FTE to provide program oversight, supervision of project coordinator, act as liaison with the City of Albany	\$ 5,000
Program Supervisor: 0.1 FTE of existing staff to provide program coordination, supervision of case management, prepare program reports and coordinate program data collection.	\$ 7,725
Housing Navigator: 1.0 FTE Primary responsibility to perform assessments, developing housing stabilization plan to reduce barriers to housing, and Housing retention support as needed.	\$ 52,000
Benefits: Payroll tax, health benefits, Workers' Compensation, retirement contribution for staff @ 23% of wages	\$ 14,078
Transportation costs: Mileage reimbursement for program staff to visit participants, BFHP Vehicle operating costs (gas, insurance, maintenance) for transporting clients, Transit Passes for Clients, and staff accompanying clients on public transit	\$ 2,310
Program/Office Supplies: Program materials (paper, folders, etc.) for client files and outreach (including weekly hospitality supplies for homeless drop-in), Fees for obtaining ID cards, SS cards, birth certificates, credit reports, etc.	\$ 1,522
Operations costs: Wireless access plan, cell phone reimbursement; Office space,	\$ 5,145

Funds up to \$300 will be distributed by BFHP on an as needed basis for emergency situations such as an immediate need for a motel room or for health crises. Any need greater than \$300 will be approved by Emeryville staff and no individual will receive more than \$1,000 in Emerging Needs Funds in a twelve month period without City staff approval after an analysis of remaining funds.





RESOLUTION NO. 18-49

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Memorandum Of Understanding With The City Of Oakland For The Operation Of The North County Family Front Door In An Amount Not To Exceed \$25,000

WHEREAS, homelessness and housing instability have wide-ranging negative impacts; and

WHEREAS, individuals or families who are experiencing homelessness, or at risk of becoming homeless, are often unable to reach their full potential at home, at work, at school, or in the community; and

WHEREAS, the high cost of housing in Alameda County increases cases of homelessness and presents a barrier to its prevention; and

WHEREAS, on May 15, 2018 the City Council adopted an updated City of Emeryville Homeless Strategy, which calls for working with the local jurisdictions to coordinate and fund outreach, shelter, re-housing and case management services; and

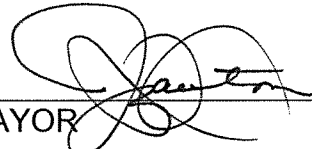
WHEREAS, the North County Family Coordinated Entry System ("Family Front Door") provides specialized access to homeless services for families; and

WHEREAS, the Cities of Emeryville and Oakland desire to enter into a Memorandum of Understanding (MOU) describing how the City of Oakland will provide the North County Family Coordinated Entry System ("Family Front Door"); now, therefore, be it

RESOLVED that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Memorandum of Understanding between the City of Emeryville and City of Oakland, in substantial form as attached as Exhibit A to this Resolution, with respect to the operation of the North County Family Coordinated Entry System ("Family Front Door") in an amount not to exceed \$25,000.


ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 15, 2018 by the following vote:

AYES:	<u>4</u>	<u>Mayor Bauters and Council Members Donahue, Martinez and Patz</u>
NOES:	<u>0</u>	<u></u>
ABSTAIN:	<u>0</u>	<u></u>
ABSENT:	<u>1</u>	<u>Vice Mayor Medina</u>


MAYOR


ATTEST:

APPROVED AS TO FORM:


CITY CLERK



CITY OF EMERYVILLE


CITY ATTORNEY

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EMERYVILLE
AND
THE CITY OF OAKLAND
FOR FAMILY FRONT DOOR SERVICES
FY 2018/2019**

1. Background

The City of Emeryville has allocated a total of \$25,000 towards the operation of the North County Family Front Door (FFD) as part of the Alameda County Coordinated Entry System.

2. Purpose of Memorandum of Understanding

The purpose of this Memorandum of Understanding ("MOU") is to identify the services to be provided by the City of Oakland and the responsibilities of the City of Oakland and the City of Emeryville pursuant to the FFD funded under this MOU.

3. Scope of Services

The City of Oakland will perform or arrange for the performance of services under this MOU in the manner and time provided herein as described in Exhibit A attached hereto ("Services"). Any subcontract funded under this MOU shall be subject to the terms and conditions of this MOU.

4. Budget

The Budget and Terms and Conditions of Payment is attached hereto as Exhibit B and incorporated herein as part of this MOU. Budget modifications shall not alter: 1) the basic scope of Services required to be performed under this MOU; 2) the time period for the Services to be performed under this MOU; or, 3) the total amount of the authorized budget of this MOU (see Exhibit B), unless set forth in a written amendment to this MOU signed by the City of Oakland and the City of Emeryville.

5. Method of Payment

The City of Emeryville agrees to provide funds in an amount not to exceed \$25,000 to the City of Oakland for performance of the Services. Payment shall be made pursuant to the terms and conditions set forth in Exhibit B. Sums not so paid shall be retained by the City of Emeryville.

6. Indemnity and Insurance

The City of Oakland shall indemnify, defend and hold harmless the City of Emeryville, its officers, agents, and employees, from and against any and all liability, loss expense (including reasonable attorney's fees), or claims of injury or damage arising out of the performance of this MOU but only in proportion to and to the extent such liability, loss, expense (including attorney's fees) claims or injury or damage are caused by or result from any negligent or willful act or omission of the City of Oakland or any of its officials, agents, employees or volunteers in the performance of the Services.

The City of Oakland shall provide evidence of self-insurance.

The City of Oakland shall require grantees providing Services to indemnify, defend and hold harmless the City of Emeryville, its officers, agents, and employees from and against any and all liability, loss expense (including reasonable attorney's fees), or claims of injury or damage arising out of the performance of this MOU but only in proportion to and to the extent such liability, loss, expense (including attorney's fees) claims or injury or damage are caused by or result from any negligent or willful act or omission of the grantees or any of its officials, agents, employees or volunteers in the performance of the Services. In addition, the City of Oakland shall require the grantees to maintain General Liability, Workers' Compensation, Automobile, and Professional Liability Insurance coverage as deemed appropriate by the City of Oakland. The City of Oakland shall require that the City of Emeryville, its officials, agents and employees are named as an additional insured on the required general liability and automobile liability insurance policies, which shall be the primary insurance. Proof of coverage will be provided to the City of Emeryville within ten days of the execution of the contract with a grantee providing Services.

7. Fiscal Administration, Record Keeping and Reporting

The City of Oakland shall ensure that providers maintain on a current basis documentation of services provided, and all related documents and records to assure proper accounting of funds and performance under the terms of this MOU, including sections A and B below.

A. The City of Oakland agrees to establish and maintain fiscal controls and accounting procedures in accordance with generally accepted accounting principles. The City of Oakland shall ensure that funds under this MOU are properly disbursed, are adequately controlled, and are accounted for separately from all other funds controlled by the City of Oakland.

B. The City of Oakland agrees to keep records that fully disclose the amount, date, purpose, payee, and disposition of the proceeds of the MOU; the total cost of programs supported by funds under this MOU, and the amount and disposition of that portion of the total costs provided by other sources. The procedure developed by the City of Oakland must provide for the accurate and timely recordation of the receipt of funds, expenditures, and unexpended balances.

The City of Oakland agrees that the City of Emeryville will have the right to review, obtain, and copy all records pertaining to performance under this MOU. The City of Oakland agrees to provide the City of Emeryville with any relevant information requested and shall permit the City of Emeryville to access its premises upon reasonable notice, during normal business hours for the purpose of inspecting and copying such books, records, accounts, and other material that may be relevant to this MOU. The City of Oakland further agrees to maintain such records for a period of three (3) years after final payment under this MOU.

8. Compliance with Regulations

The City of Oakland agrees, and will ensure that providers agree, to comply with all applicable laws, statutes and regulations applicable to the delivery of the provider's services.

9. Term

The term of this MOU is July 1, 2018 through June 30, 2019.

10. Waivers and Litigation

A. Waivers: No waiver of any breach of this MOU shall be held to be a waiver of any prior or subsequent breach. The failure of either party to enforce at any time the provisions of this MOU or to require at any time performance by the other party of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this MOU or the right of a party to enforce these provisions.

B. Litigation: If any provision of this MOU, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, shall not affect any other provisions of this MOU and the remainder of this MOU shall remain in full force and effect. All provisions of this MOU are and shall be deemed severable. The City of Oakland shall notify the City of Emeryville immediately of any claim or action undertaken by or against it, which affects or may affect this MOU or the City of Emeryville and shall take such action with response to the claim or action as is consistent with the terms of the MOU.

12. Termination of this MOU

The City of Emeryville may terminate this MOU immediately for cause, which shall include as an example but not as a limitation:

- A. Material failure, for any reason, of the City of Oakland to fulfill in a timely and proper manner its obligations under this MOU, including compliance with local, State and Federal laws and regulations and applicable directives;
- B. Material failure to meet the performance standards contained in other sections of this MOU; and

C. Improper use or reporting of funds provided under this MOU.

13. Amendments

This MOU may be amended only with the written agreement of both parties.

IN WITNESS, WHEREOF, the parties hereto have caused this MOU to be executed this _____ day of _____, 2018.

CITY OF EMERYVILLE

CITY OF OAKLAND

BY: _____
Carolyn Lehr
City Manager

BY: _____
Sabrina B. Landreth
City Administrator

Date: _____

Date: _____

Approved as to form:

Administering Agency Approval
For Forwarding:

BY: 
Michael Guina
City Attorney

BY: _____
Sara Bedford, Director
Human Services Department

Date: _____

Date: _____

City of Oakland Resolution No. 86919
Approved As To Form and Legality:

BY: _____
Deputy City Attorney

Exhibit A
Scope of Services

North County Family Coordinated Entry System

1. The funding provided to the City of Oakland pursuant to this MOU shall be used for the North County Family Front Door (FFD). The FFD is a coordinated entry system for homeless families. The program is a collaboration amongst the Building Futures with Women and Children (BFWC), East Oakland Community Project (EOCP), and the City of Oakland's Human Services Department. The FFD provides a single point of entry for families in North County who are experiencing a housing crisis. Literally homeless families are assessed and prioritized for a range of interventions including housing navigation (case management) interim housing, rapid rehousing and permanent supportive housing. The FFD also works to secure shelter for those families that need it. The majority of literally homeless families are assisted with rapid rehousing assistance. Non-literally homeless families are provided with "problem solving" referrals and assistance to maintain or locate housing outside of the homeless services system

2. Operation of the FFD identified above shall include the following:

- A. A toll free call in number accessible during regular business hours;
- B. Intake/assessment, housing problem solving, prioritization, matching to homeless services resources, housing navigation, and referrals to mainstream systems; and
- C. Services may be provided by phone, in the office by appointment, or on the streets/in the community depending on a family's preference

3. The City of Oakland shall submit a report within sixty (60) days after the end of the MOU period, in a format approved by the City of Emeryville, which shall include the total number of unduplicated Emeryville homeless families who were assisted through the system. The City of Oakland and its Grantee will implement a broad definition of connection to Emeryville to best capture the total number of unduplicated Emeryville homeless families served (e.g. did they lose their housing in Emeryville, did they sleep in Emeryville last night, do they frequently spend the day in Emeryville, do they work or go to school in Emeryville?). The report will include the total number of unduplicated Emeryville homeless families served, and basic demographic information (age, gender, race, ethnicity, and income).

4. City of Oakland may use funding for FFD for the purchase of supplies and services related to the execution of the program described above including but not limited to staffing costs and client transportation costs.

Exhibit B
Budget and Terms and Conditions of Payment

1. A maximum of \$25,000 is available from the City of Emeryville under this MOU for the services identified in Exhibit A.
2. City of Oakland shall invoice the City of Emeryville for the total amount of funds provided by this MOU in a single letter invoice. An invoice must be submitted before June 30, 2019, unless an extension is approved in writing by the City of Emeryville.
3. An expenditure which is not authorized by this MOU or which cannot be adequately documented shall be disallowed and must be reimbursed to the City of Emeryville. Expenditures for work not described in Exhibit A shall only be deemed authorized if the performance of such work is approved in writing by the City of Emeryville.