



Office of the City Manager

CONSENT CALENDAR
December 10, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Memorandum of Understanding for a Winter Relief Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program, consisting of \$75,000 allotted from Alameda County to the City, which will provide homeless people on the streets of Berkeley housing respite through May 31, 2020.

FISCAL IMPACTS OF RECOMMENDATION

The County has allocated \$75,000 to be spent on Winter Relief Program activities in Berkeley. The funds will be deposited in revenue account 421-4445-331.27-01, and will be appropriated as part of the Second Amendment to the FY 2020 Annual Appropriations Ordinance. Funds will be used to purchase nightly lodging in area motels and will be administered by the Mental Health Division. The Contract Management System number for this contract is CMS No. SPCAL.

CURRENT SITUATION AND ITS EFFECTS

The unsheltered homeless population in Berkeley, Emeryville and Albany exceeds the number of available shelter beds in North County. Alameda County ("County") has allocated funding to support winter relief programs across the county. This funding will be used to provide homeless people in Berkeley additional temporary housing options (such as motel stays) between October 15, 2019 and May 31, 2020. It will be used to improve the health and safety of residents who would otherwise remain unsheltered during this winter season. The City's Homeless Outreach and Treatment Team (HOTT) staff will have access to these funds and place high need and vulnerable homeless people in temporary lodging, allowing them a respite from the streets while support services staff assess needs and develop a long-term housing plan.

BACKGROUND

Annually, the County allocates funding to cities and non-profit agencies to mitigate the impact of inclement weather on people who are literally homeless living on the streets. This year, the funds will be used by the City's Homeless Outreach and Treatment Team, to temporarily house high need and vulnerable people, allowing them a respite

from the streets while support services staff assess needs and develop a long-term housing plan. Last year's Winter Relief program, with less than a third of this year's funding, provided motel stays for eleven separate individuals, more than half of whom were disabled, resulting in one hundred eighty-seven nights of safety and serenity.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the action recommended in this report.

RATIONALE FOR RECOMMENDATION

This funding will allow more homeless people to quickly move into temporary housing during this winter season while working with housing navigators to move into longer term shelter options.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, 510-981-7611

Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, 510-981-5249

Attachments:

1: Resolution

2: Memorandum of Understanding

RESOLUTION NO. ##,###-N.S.

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF ALAMEDA AND THE CITY OF BERKELEY WHICH OUTLINES THE SERVICES TO BE PROVIDED AND THE RESPONSIBILITIES OF THE COUNTY AND CITY IN THE WINTER RELIEF PROGRAM

WHEREAS, the County of Alameda (“COUNTY”) has allocated a total of \$75,000 for respite from the elements for literally homeless people living on the streets of Berkeley during the period of October 15, 2019 through May 31, 2020; and

WHEREAS, the parties acknowledge that there is a lack of available shelter space to provide shelter for the homeless populations of Berkeley, Albany, and Emeryville; and

WHEREAS, the COUNTY and the City of Berkeley further acknowledge that funding for motel stays for unsheltered homeless individuals during the typically cold and rainy winter season will improve health and safety outcomes for residents who would otherwise remain unsheltered during inclement weather; and

WHEREAS, the City’s Homeless Outreach and Treatment Team (HOTT) staff will utilize these funds and place high need and vulnerable homeless people in temporary lodging, allowing them a respite from the streets while support services staff assess needs and develop a long-term housing plan; and

WHEREAS, the funds will be deposited in revenue account 421-4445-331.27-01 and this contract has been entered in the Citywide contract database and assigned CMS No. SPCAL.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to receive funds in the amount of \$75,000 and negotiate and execute a memorandum of understanding (MOU) with the County of Alameda that outlines the services to be provided and the responsibilities of the County and the City in the Winter Relief Program. A record signature copy of said MOU and any amendments to be on file with the Office of the City Clerk.

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of October 29, 2019, is by and between the County of Alameda, hereinafter referred to as the "COUNTY", and the City of Berkeley, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

Whereas, COUNTY desires winter relief services which are more fully described in Exhibit A, attached hereto; and

Whereas, CONTRACTOR is professionally qualified to provide such services and is willing to provide same to COUNTY; and

Now, therefore it is agreed that COUNTY does hereby retain CONTRACTOR to provide winter relief services, and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements

The term of this Agreement shall be from October 15, 2019 through May 31, 2020.

The compensation payable to CONTRACTOR hereunder shall not exceed *Seventy-Five thousand dollars (\$75,000)* for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

CITY OF BERKELEY

By: _____
Signature

By: _____
Signature

Name: _____
(Printed)

Name: _____
(Printed)

Title: President, Board of Supervisors

Title: _____

Date: _____

Approved as to Form:

By: _____
County Counsel Signature

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

GENERAL TERMS AND CONDITIONS

1. INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of COUNTY is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the COUNTY agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two week's notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The COUNTY may participate in the defense of any such claim without relieving CONTRACTOR of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to COUNTY, including defense costs, and shall not be limited by any insurance limits.

In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of COUNTY, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of COUNTY.

3. INSURANCE AND BOND: CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The COUNTY and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of CONTRACTOR's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the COUNTY, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. CONTRACTOR's 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 COUNTY. CONTRACTOR's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the COUNTY before COUNTY's own insurance policy or self-insurance shall be called upon to protect it as a named insured.

4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., CONTRACTOR shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury, or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify the Alameda County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-Contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.

- c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
 8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit B hereto.
 9. TRAVEL EXPENSES: CONTRACTOR shall not be allowed or paid travel expenses unless set forth in this Agreement.
 10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
 11. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby assigns to the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's sub-Contractors or third parties at the request of the CONTRACTOR (collectively, "Documents and

Materials”). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR also hereby assigns to the COUNTY and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in CONTRACTOR’s Information System, respecting in any way the subject matter of this Agreement.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY’s rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR’s services as set forth in Exhibit “A” of this Agreement have been fully performed or paid for.

In CONTRACTOR’s contracts with other Contractors, CONTRACTOR shall expressly obligate its Sub-Contractors to grant the COUNTY the aforesaid assignment and license rights as to that Contractor’s Documents and Materials. CONTRACTOR agrees to defend, indemnify, and hold the COUNTY harmless from any damage caused by a failure of the CONTRACTOR to obtain such rights from its Contractors and/or Sub-Contractors.

CONTRACTOR shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONTRACTOR and incorporated into the work as set forth in Exhibit “A”, and shall defend, indemnify and hold the COUNTY harmless from any claims for infringement of patent or copyright arising out of such selection. The COUNTY’s rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. CONFLICT OF INTEREST; CONFIDENTIALITY: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, CONTRACTOR represents to and agrees with the COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing the COUNTY services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the COUNTY, as determined in the reasonable judgment of the Board of Supervisors of the COUNTY.

The CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the COUNTY will be kept confidential and not be disclosed to any other person. The CONTRACTOR agrees to immediately notify the COUNTY by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the COUNTY hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF ALAMEDA
Housing and Community Development Department
224 West Winton Avenue, 108
Hayward, CA 94544
Attn: Director Housing and Community Development

To CONTRACTOR:

City of Berkeley
Health, Housing & Community Services Department
Mental Health Division/Compliance Unit
3282 Adeline Street
Berkeley, CA 94703
Attn: Conor Murphy

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: CONTRACTOR shall not use COUNTY property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONTRACTOR assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to

its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

- d. CONTRACTOR shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The CONTRACTOR shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. DRUG-FREE WORKPLACE: CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR within five days thereafter shall notify the head of the COUNTY department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. AUDITS; ACCESS TO RECORDS: The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with COUNTY requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Alameda, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within COUNTY or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine

and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the COUNTY makes the final or last payment or within three (3) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

18. DOCUMENTS AND MATERIALS: CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
19. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. TERMINATION: The COUNTY has and reserves the right to suspend, terminate, or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR prior written notice. In the event that the COUNTY should abandon, terminate, or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its winter relief Services shall not exceed \$75,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. SMALL LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION: CONTRACTOR has been approved by COUNTY to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the COUNTY's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, CONTRACTOR may be required to immediately comply with the COUNTY's Small and Emerging Local Business provisions, including but not limited to:

- a. CONTRACTOR must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. CONTRACTOR shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- d. CONTRACTOR shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the COUNTY. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the COUNTY department contract representative identified under Item #13 above. CONTRACTOR will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

COUNTY will be under no obligation to pay CONTRACTOR for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

22. FIRST SOURCE PROGRAM: For contracts over \$100,000, CONTRACTOR shall provide COUNTY ten (10) working days to refer to CONTRACTOR, potential candidates to be considered by CONTRACTOR to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the COUNTY that CONTRACTOR has available during the contract term before advertising to the general public.
23. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.

24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
26. **HEADINGS** herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of COUNTY, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
28. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. **ASSURANCE OF PERFORMANCE:** If at any time COUNTY believes CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

30. **SUBCONTRACTING/ASSIGNMENT:** CONTRACTOR shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONTRACTOR shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without COUNTY's prior written approval.
 - c. CONTRACTOR shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. CONTRACTOR shall verify subcontractor's compliance.
 - d. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to COUNTY under this Agreement infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless COUNTY of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. COUNTY will: (1) notify CONTRACTOR promptly of such claim, suit, or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis,

information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without COUNTY's prior written consent, to any settlement, which would require COUNTY to pay money or perform some affirmative act in order to continue using the Contractor Products.

- a. If CONTRACTOR is obligated to defend COUNTY pursuant to this Section 33 and fails to do so after reasonable notice from COUNTY, COUNTY may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to COUNTY any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with COUNTY's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, COUNTY retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The CONTRACTOR is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the CONTRACTOR elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for additional time needed to complete the scope of work by mutual agreement of the COUNTY and the CONTRACTOR.
36. SIGNATORY: By signing this agreement, 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

[END OF GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

- 37. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

- 38. CONTRACTOR is exempt from item 21, SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION, because CONTRACTOR is a government agency.

County Counsel Signature: _____

EXHIBIT A

DEFINITION OF SERVICES

1. CONTRACTOR will provide a Winter Relief Program in the form of vouchers for short-term motel stays for vulnerable, high-needs, unsheltered homeless individuals staying in Berkeley, Albany, and Emeryville.
2. CONTRACTOR shall ensure that the motels that the vouchers are used in are in acceptable condition and that participants are assessed for Coordinated Entry during their motel stay.
3. Services
 - (a) CONTRACTOR, through its Housing Resource Center (HRC), shall provide vouchers for short-term motel stays for vulnerable, high needs unsheltered homeless individuals staying in Berkeley, Albany, or Emeryville.
 - (b) CONTRACTOR shall prioritize for short-term motel stays vulnerable and high-needs individuals, as determined by CONTRACTOR, which determination may be based on outreach and referral via CONTRACTOR's Homeless Outreach & Treatment Team (HOTT).
 - (c) CONTRACTOR shall perform Coordinated Entry assessments during the short-term motel stays, using the County's prioritization tool to identify high-needs, long-term unsheltered homeless individuals.
 - (d) CONTRACTOR shall ensure that the motels that the vouchers are used in are in acceptable physical condition and are accessible for clients with disabilities.
 - (e) The length of stay for each participant shall be determined by CONTRACTOR based on the needs of the client and the availability of other appropriate shelter options. The maximum stay for any participant shall not exceed 29 days.
4. Reporting Requirements
 - a. CONTRACTOR shall submit monthly reports no later than 15 days after the end of the month being reported on during the contract term.
 - b. CONTRACTOR shall submit a final narrative within thirty (30) days at the end of the contract period, in a format approved by COUNTY containing, at a minimum, the information in Exhibit A. The report shall include a narrative accounting of the progress achieved toward the Scope of Work objectives, and the following unsheltered individual information using aggregate reporting.
 - c. CONTRACTOR will make best efforts to collect and input data included in Reporting Requirements Section 4.e. at 100% data quality.
 - d. The HUD definition of "homeless" shall be used for reporting purposes. "Homeless" as defined by HUD, means an individual or family with a primary nighttime residence that

is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train.

e. MONTHLY REPORT SUMMARY

i. Number of Individuals Served:

1. Unduplicated clients served
2. The following demographic characteristics of clients served
 - a. Age, gender, race, ethnicity, city of last residence
 - b. Residence prior to entry

ii. Program Impact and Outcomes:

1. Number and percentage of unsheltered individuals who have exited the winter shelter into year-round shelter or other interim housing
2. Number and percentage of unsheltered individuals who have exited the winter shelter into permanent housing
3. Number and percentage of unsheltered individuals who have been connected to employment assistance, full or part-time employment, general assistance, food stamps, or other mainstream supports.

EXHIBIT B

PAYMENT TERMS

1. COUNTY approves the following budget for services performed by CONTRACTOR:

Line Item	Amount
A.1. Administration	\$7,500
A.2. Motel Payments for Vouchers	\$67,500
Total Amount Requested:	\$75,000

2. Once the line item budget has been approved through the execution of the Contract, there can be no more than four (4) requests of adjustments to budget line item amounts during the contract period, including any final adjustments done at the end of the program year unless approved by the Community Development Agency’s Director of the Housing and Community Development Department or the Director’s designee.
3. Invoices shall be reviewed by the liaison assigned to monitor this contract and shall be approved by the Community Development Agency’s Director of the Housing and Community Development Department or the Director’s designee. COUNTY will use its best efforts to make payment to CONTRACTOR upon successful completion and acceptance of the following services listed within thirty (30) days upon receipt and approval of invoice.
4. Total payment under the terms of this Agreement will not exceed the total amount of \$75,000. This cost includes all taxes and all other charges.
5. Upon award of this Agreement by COUNTY, COUNTY and CONTRACTOR shall forthwith jointly create a schedule governing the timely performance of CONTRACTOR’s services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter CONTRACTOR shall perform all services under this Agreement in conformance with the schedule.
6. All requests for reimbursement will be in a format approved by the COUNTY and shall be submitted to the COUNTY on a monthly basis with supporting documentation of actual costs incurred. Requests for reimbursement should be received within 30 days of the end of each claim month. Requests received after 30 days may be delayed in processing.

7. Any adjustments made by the fiscal auditors at the year-end audit, under the AICPA guidelines and other relevant federal regulations should be brought to the attention of the COUNTY for staff reconciliation.

EXHIBIT C

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 minimum 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: \$1,000,000 per accident for bodily injury or disease
D	<p>Endorsements and Conditions:</p> <ol style="list-style-type: none"> 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 CG 20 38 04 13. 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 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. 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. 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. 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. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by 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 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: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. 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 required certificate(s) and endorsements must be sent as set forth in the Notices provision. 	