



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: **COMMUNITY DEVELOPMENT**

*Paul A. Jensen*

Prepared by: **Paul A. Jensen**  
Community Development Director

City Manager Approval: \_\_\_\_\_

*AS*

**TOPIC: BELOW-MARKET RATE HOMEOWNERSHIP PROGRAM**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE SERVICE AGREEMENT WITH THE HOUSING AUTHORITY OF THE COUNTY OF MARIN (MARIN HOUSING) FOR THE ADMINISTRATION OF THE BELOW-MARKET RATE HOMEOWNERSHIP PROGRAM; CASE NO.: P20-006**

**RECOMMENDATION:**

Adopt resolution approving and authorizing the City Manager to sign the Service Agreement with Marin Housing.

**BACKGROUND:**

In 1986, the City adopted inclusionary housing policies, which require that a percentage of below market rate (BMR) housing units (both for-sale and rental) be incorporated into new market rate housing projects. Since the inception of these policies, the Housing Authority of the County of Marin (Marin Housing) has been administering the City's BMR Homeownership Program. As part of this service, Marin Housing: a) coordinates and selects purchasers (through lottery or waiting list) for the sale (and resale) of the units to income-qualifying households; b) monitors and enforces the BMR Agreement and property deed restrictions for each for-sale unit; and c) administers all property sales and transaction steps. In addition to San Rafael, Marin Housing administers the BMR homeownership programs for all jurisdictions in Marin County except for the City of Novato. The BMR homeownership program costs are allocated between the participating jurisdictions. Each participating jurisdiction also shares in the legal costs of associated enforcement in their respective jurisdictions.

The program administration is memorialized through a City/Marin Housing Service Agreement (Agreement). The most current Agreement was executed on November 14, 2013. The Agreement was approved for a five-year term with a two-year extension clause and expired on June 30, 2020. The expired Agreement provided for an annual administration cost of \$68,655 (covering 115 BMR ownership units at \$597.00 per unit). Additionally, the Agreement also authorized the City Manager to annually allocate up to \$80,000 to the program to also cover legal costs for enforcement actions, if needed.

**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

Marin Housing has prepared a new Agreement for continued program administration (see Attachments 2 and 3). The annual cost for this administration is \$689.00 per BMR homeownership unit. At present, the City has an inventory of 123 BMR homeownership units (net increase in units since 2013), so the City's total annual cost for Marin Housing's administration of this program is \$84,747.00. The Agreement has been drafted to cover a term of (4) years, with a one-year automatic extension, to June 30, 2025. Not included in the new Agreement is the authorization or the City Manager to annually allocate up to \$80,000 to the program to also cover legal costs for enforcement actions.

**ANALYSIS:**

Continuing the program service and entering into a new Agreement with Marin Housing is practical and logical. Marin Housing has seamlessly administered and managed the City's BMR homeownership program for nearly 35 years. Second, Marin Housing is adequately staffed to provide the professional services needed to successfully manage the program. Lastly, as discussed below in the Fiscal Impact section, continuing this service with Marin Housing will have no direct impact on the City's budget or General Fund.

**FISCAL IMPACT:**

The Agreement with Marin Housing would have no impact on the City's General Fund or the City's Affordable Housing In-lieu Fee Fund #243. The annual cost for this administrative service is paid from the Successor Redevelopment Agency L & M Housing Fund #495, which has adequate balance to cover the full term of the Agreement.

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Adopt resolution.
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Reject the resolution.

**RECOMMENDED ACTION:**

Adopt the resolution approving the Agreement with Marin Housing.

**ATTACHMENTS:**

1. Resolution
2. Attachment to Resolution: Agreement
3. Exhibit A to Agreement: Program Management Services

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN THE SERVICE AGREEMENT WITH THE HOUSING AUTHORITY OF THE COUNTY OF MARIN (MARIN HOUSING) FOR THE ADMINISTRATION OF THE BELOW-MARKET RATE (BMR) HOMEOWNERSHIP PROGRAM**

WHEREAS, San Rafael General Plan 2020 Policy H-18 (Inclusionary Housing Requirements) requires that new market-rate residential development projects provide a percentage of the total project unit count for below-market rate (BMR) sale or rental. This policy, which was initially adopted by the City in 1986, sets, among others, required affordability levels for the BMR units, the term the BMR units must remain in-place, and restrictions on resale; and

WHEREAS, at present, citywide, there are 123 BMR homeownership units that are integrated into market-rate residential projects and communities. Tracking and administering the sale and re-sale of the BMR ownership units is time consuming and requires specific real estate and financing skills; and

WHEREAS, since the inception of the City's BMR Homeownership Program, the City has relied on the services of the Housing Authority of the County of Marin (Marin Housing) to manage and administer this program. As part of this this service, Marin Housing: a) coordinates and selects purchasers (through lottery or waiting list) for the sale and resale of the units to income-qualifying households; b) monitors and enforces the BMR Agreement and property deed restrictions for each for-sale unit; and c) administers all property sales and transaction steps. This service is provided through a City/Marin Housing Services Agreement (Agreement). The last Agreement, which was for a seven-year term, expired on June 30, 2020; and

WHEREAS, a new Agreement has been prepared for Marin Housing's continued management of the City's BMR Homeownership Program. The new Agreement sets an annual administration cost of \$689.00 per BMR ownership unit. The new Agreement would cover a term of four years, with a one-year automatic extension to June 30, 2025. The new Agreement, attached hereto and incorporated herein by reference, includes a detailed description of the program management services (Exhibit A); and

WHEREAS, the cost for administering this program by Marin Housing would be paid from the Successor Redevelopment Agency L & M Housing Fund #495, which has an adequate balance to cover the full term of the Agreement; and

WHEREAS, the City Council finds and determines that it is practical and logical for Marin Housing to continue its service of administering the BMR Ownership Program;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby approves and authorizes the City Manager to execute a new Agreement for management of the City's BMR Homeownership Program with Marin Housing in the form attached to this Resolution, subject to final approval as to form by the City Attorney.

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council held on the 20th day of July 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

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LINDSAY LARA, City Clerk

Attachment: Service Agreement

**Agreement**  
**for BMR Program Portfolio Management**  
*City of San Rafael*

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**AGREEMENT FOR PROFESSIONAL SERVICES**

**FOR PROGRAM MANAGEMENT SERVICES FOR OWNERSHIP  
AFFORDABLE HOUSING PROGRAM**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ of \_\_\_\_\_, 2020, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and the HOUSING AUTHORITY OF THE COUNTY OF MARIN (hereinafter "**CONTRACTOR**" or "**AUTHORITY**").

This Agreement is for BMR Program Portfolio Management (the "Agreement") relating to **CITY's** Below Market Rate Homeownership Program (the "BMR Program"), and each unit that is part of the BMR Program is referred to a "BMR unit".

**RECITALS**

**WHEREAS**, San Rafael General Plan 2020 contains policies for the provision of affordable housing programs in San Rafael; and

**WHEREAS**, **CITY** has contracted with **CONTRACTOR** to manage **CITY'S** affordable ownership housing program since the program's inception in the 1980's; and

**WHEREAS**, the **CONTRACTOR** manages the affordable ownership housing program for all jurisdictions in the County, with the exception of the City of Novato; and

**WHEREAS**, the current contract expires on June 30, 2020. The **CITY** and **CONTRACTOR** desire to renew the contract for an additional time period and to increase the contract amount by two percent annually to reflect inflation costs.

**AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** Paul Jensen, Community Development Director, is hereby designated the PROJECT MANAGER for the **CITY**, and said PROJECT MANAGER, or any successor PROJECT MANAGER that **CITY** may, in its sole discretion, designate, shall supervise all aspects of the progress and execution of this Agreement.

B. **CONTRACTOR'S Project Director.** **CONTRACTOR** shall assign a single

PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONTRACTOR**. Carmen Hall Soruco is hereby designated as the PROJECT DIRECTOR for **CONTRACTOR**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the **CONTRACTOR** shall notify the **CITY** within ten (10) business days of the substitution.

2. DUTIES OF CONTRACTOR.

**CONTRACTOR** shall perform the duties and/or provide services as pursuant to the Scope of Program Management Services attached as Exhibit A hereto and incorporated herein by reference.

3. DUTIES OF CITY.

**CITY** shall pay the compensation as provided in Paragraph 4, and perform the duties as follows:

A. Execute and, if appropriate, record documents that are appropriate or necessary for the operation of the BMR Program and performance of this Agreement and transactions contemplated hereby.

B. Provide conditions of approval for each new development that includes affordable units to be managed by the **AUTHORITY** and execute the three-party (among **AUTHORITY**, **CITY**, and a developer/contractor) *Affordable Housing Agreement*.

C. Approve the **AUTHORITY'S** initial for-sale BMR Unit pricing information for the *Affordable Housing Agreement* pursuant to the conditions of approval and/or the affordability requirements established by **CITY**.

D. Obtain **CITY** approvals of the three-party *Affordable Housing Agreement* among **AUTHORITY**, **CITY**, and a developer.

E. Notify the **AUTHORITY** of any changes to local code requirements or policies that impact the **CITY'S** BMR program, affordable housing program, or the terms of this Agreement.

F. Communicate with **AUTHORITY**, including, but not limited to, meeting with **AUTHORITY** on an annual basis to review the asset management portfolio and the services.

G. Assess and pay fees due to **AUTHORITY** as required by this Agreement. The invoiced fees and related expenses shall be paid by **CITY** within thirty (30) days of **AUTHORITY'S** submission of billings. **CITY** further agrees to assume and be solely responsible for all and any payment for legal services performed on **CITY'S** and **AUTHORITY'S** behalf per this Agreement.

H. Provide, or cause to be provided, access by **AUTHORITY** to any and all **CITY** information and documentation necessary for the **AUTHORITY** to perform pursuant to this Agreement, including but not limited to, documents recorded by **CITY**.

4. COMPENSATION. PROGRAM MANAGEMENT SERVICES FEE.

**CITY** shall pay **AUTHORITY** \$689.00 per BMR unit, annually, for each BMR Unit that is in the BMR Program, which shall be due to **AUTHORITY** on or before July 1 of each year during the term of this Agreement, commencing on July 1, 2020 and increased each anniversary date thereafter by 2.0%.

As of the effective date of this Agreement, the BMR Program in the City of San Rafael is comprised of One hundred and twenty-three (123) Units. Accordingly, **CITY** shall pay to **AUTHORITY** EIGHTY THOUSAND SEVEN HUNDRED FORTY-SEVEN DOLLARS (\$84,747.00) for the initial 12 months of this Agreement for services rendered through June 30, 2021.

The total number of BMR Units will be increased or decreased over time. The **AUTHORITY** will include new units during the Fiscal Year in which an eligible buyer is in contract to purchase a BMR unit. The **AUTHORITY** will remove units from the BMR program during the Fiscal Year in which the affordability restrictions have expired or a BMR unit is removed from the BMR program. These changes will adjust the total annual payment that **CITY** is obligated to pay to the **AUTHORITY**.

5. TERM OF AGREEMENT.

Regardless of the term of the BMR Resale Restrictions recorded with **CITY's** BMR Units, the term of this Agreement shall be for four (4) years commencing as of July 1, 2020 (FY 2020-21 to FY 2023-2024), and will automatically renew for an additional one (1) year term, to June 30, 2025, unless either party notifies the other in writing of its intention to terminate this Agreement at least 120 days prior to the expiration of the initial term.

6. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement during the contract period without cause upon one hundred and twenty (120) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon sixty (60) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other. In the event of termination of this Agreement by either party, with or without cause, **CITY** shall pay **CONTRACTOR** a prorated amount of the full compensation amount otherwise due for the fiscal year in which the termination becomes effective, calculated by dividing the number of days that have elapsed in the fiscal year in which the termination becomes effective by 365, less

credits for any Annual Maintenance and Certification Fees collected by **CONTRACTOR**, as provided in Paragraph 4(B)..

D. **Return of Documents.** Upon termination, any and all **CITY** documents or materials provided to **CONTRACTOR** and any and all of **CONTRACTOR'S** documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to **CITY** as soon as possible, but not later than thirty (30) days after termination.

7. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the **CONTRACTOR** in connection with the performance of its duties under this Agreement shall be the sole property of **CITY**. **CITY** may use said property for any purpose, including projects not contemplated by this Agreement.

8. INSPECTION AND AUDIT.

Upon reasonable notice, **CONTRACTOR** shall make available to **CITY**, or its agent, for inspection and audit, all documents and materials maintained by **CONTRACTOR** in connection with its performance of its duties under this Agreement. **CONTRACTOR** shall fully cooperate with **CITY** or its agent in any such audit or inspection.

9. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

10. INSURANCE.

A. **Scope of Coverage.** During the term of this Agreement, **CONTRACTOR** shall maintain, at no expense to **CITY**, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) dollars per occurrence.

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover any claims arising out of the **CONTRACTOR's** performance of services under this Agreement. Where **CONTRACTOR** is a professional not required to have a professional license, **CITY** reserves the right to require **CONTRACTOR** to provide professional liability insurance pursuant to this section.



4. If it employs any person, **CONTRACTOR** shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **CONTRACTOR's** worker's compensation insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

**B. Other Insurance Requirements.** The insurance coverage required of the **CONTRACTOR** in subparagraph A of this section above shall also meet the following requirements:

1. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONTRACTOR'S** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONTRACTOR'S** policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONTRACTOR** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONTRACTOR** may acquire against **CITY** by virtue of the payment of any loss under such insurance. **CONTRACTOR** agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not **CITY** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

7. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of **CITY** (if agreed to in a written contract or agreement) before **CITY'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements

for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONTRACTOR** under this agreement.

C. **Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONTRACTOR's** insurance policies must be declared to and approved by the PROJECT MANAGER and City Attorney and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **CITY** or other additional insured party. At **CITY's** option, the deductibles, or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY's** satisfaction, or **CONTRACTOR** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **Proof of Insurance.** **CONTRACTOR** shall provide to the PROJECT MANAGER or **CITY'S** City Attorney all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. **CITY** reserves the right to obtain a full certified copy of any insurance policy and endorsements from **CONTRACTOR**. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the City Attorney.

## 11. INDEMNIFICATION.

A. **CONTRACTOR** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CITY**, and hold harmless **CITY**, its officers, agents, employees and volunteers (collectively, the "**City Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), arising out of **CONTRACTOR'S** willful misconduct or negligent performance of its obligations or conduct of its operations under this Agreement. To the extent that liability is caused by the negligence or willful misconduct of the **City Indemnitees**, the **CONTRACTOR'S** indemnification obligation shall be reduced in proportion to the **City Indemnitees'** share of liability for the negligence or willful misconduct. In addition, the acceptance or approval of the **CONTRACTOR'S** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONTRACTOR'S** indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONTRACTOR'S** performance of or operations under this Agreement, **CONTRACTOR** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. **CITY** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CONTRACTOR**, and hold harmless **CONTRACTOR**, its officers, agents, employees and volunteers (collectively, the "**Contractor Indemnitees**"), from and against any

claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "CLAIMS"), arising out of CITY'S willful misconduct or negligent performance of its obligations or conduct of its operations under this Agreement. To the extent that liability is caused by the negligence or willful misconduct of the **Contractor Indemnitees**, the CITY'S indemnification obligation shall be reduced in proportion to the **Contractor Indemnitees'** share of liability for the negligence or willful misconduct. In the event the **Contractor Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from CITY'S performance of or operations under this Agreement, CITY shall provide a defense to the **Contractor Indemnitees** or at **CONTRACTOR'S** option reimburse the **Contractor Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. NONDISCRIMINATION.

**CONTRACTOR** shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

13. COMPLIANCE WITH ALL LAWS.

**CONTRACTOR** shall observe and comply with all applicable federal, state, and local laws, ordinances, codes, and regulations, in the performance of its duties and obligations under this Agreement. **CONTRACTOR** shall perform all services under this Agreement in accordance with these laws, ordinances, codes, and regulations. **CONTRACTOR** shall release, defend, indemnify and hold harmless CITY, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

14. NO THIRD-PARTY BENEFICIARIES.

**CITY** and **CONTRACTOR** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

15. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO CITY'S Project Manager:

Paul Jensen  
Community Development Director  
City of San Rafael  
1400 Fifth Avenue  
P.O. Box 151560  
San Rafael, CA 94915-1560

TO CONTRACTOR'S Project Director:

Carmen Hall Soruco  
Homeownership Programs Manager  
Housing Authority of the County of Marin  
4020 Civic Center Drive  
San Rafael, CA 94903-4173

16. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONTRACTOR**, its officers, agents, and employees shall act in the capacity of an Independent Contractor, and not as employees of the **CITY**. **CONTRACTOR** and **CITY** expressly intend and agree that the status of **CONTRACTOR**, its officers, agents, and employees be that of an Independent Contractor and not that of an employee of **CITY**.

17. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONTRACTOR** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONTRACTOR** and the **CITY**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

18. SET-OFF AGAINST DEBTS.

**CONTRACTOR** agrees that **CITY** may deduct from any payment due to **CONTRACTOR** under this Agreement, any monies which **CONTRACTOR** owes **CITY** under any ordinance,

agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

19. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

20. COSTS AND ATTORNEY'S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

21. CITY BUSINESS LICENSE / OTHER TAXES.

**CONTRACTOR** shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code. **CONTRACTOR** shall pay any and all state and federal taxes and any other applicable taxes. **CITY** shall not be required to pay for any work performed under this Agreement, until **CONTRACTOR** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

22. SURVIVAL OF TERMS.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.

23. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

25. EXHIBITS.

The following exhibits are attached to this Agreement:

- Exhibit A: Contractor Scope of Work
- Exhibit B: List of BMR developments in **CITY** and number of BMR units in each development.

**IN WITNESS WHEREOF**, the Housing Authority of the County of Marin and the City of San Rafael, have executed this Agreement as of the date first written above. The undersigned represent and warrant that he/ she has full power and authority to enter into this Agreement and to bind each other in accordance with its terms.

**FOR THE CITY OF SAN RAFAEL:**

\_\_\_\_\_  
Jim Schutz, City Manager

ATTEST:

\_\_\_\_\_  
Lindsay Lara, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert Epstein, City Attorney

**FOR THE HOUSING AUTHORITY OF THE COUNTY OF MARIN:**

\_\_\_\_\_  
Lewis Jordan, Executive Director

DATE

=====END OF AGREEMENT=====

## EXHIBIT A

### PROGRAM MANAGEMENT SERVICES

The Housing Authority of the County of Marin (“Authority”) shall provide the following services to the City of San Rafael (“City”):

#### **I. INITIAL SALE OF BMR UNITS**

##### A. PRE-SALE SERVICES

- i. Meet with City and prospective developers to discuss (1) City's inclusionary housing requirements; (2) how those requirements can be satisfied through the BMR Program; and (3) how to determine a specific “affordable” sales price to be applied to a general income level target.
- ii. Assist City staff in developing the Conditions of Approval for projects with affordable units.
- iii. Establish the initial for-sale BMR Unit pricing information for the *Affordable Housing Agreement* pursuant to the conditions of approval and/or the affordability requirements established by City.
- iv. Prepare and execute the three-party *Affordable Housing Agreement* among Authority, City, and a developer/contractor, *implementing* the City’s affordable housing requirements contained in the conditions of approval. The *Affordable Housing Agreement* shall include a description of the affordable units including number of bedrooms, the affordability levels and initial sales prices, the buyer selection criteria, and the procedures for the purchase of the unit by eligible households. The Authority shall work with the City to obtain the required signatures on the Agreement.

The Authority shall effectuate the recordation of the *Affordable Housing Agreement* on the subject property and provide proof of such recording to the City. The Authority shall be paid by the Developer for the services contained in this Section A. (iv).

##### B. SALE AND RE-SALE SERVICES

- i. Provide up to date information on the BMR program requirements, income limits, and applications on the Marin Housing Authority website.
- ii. Advertise the BMR Program and BMR units when appropriate and through methods deemed appropriate by the Authority, such as e-mail blasts, the Authority website and/or BMR database, and/or mailers to community service providers, and/or lenders.

- iii. Manage applicants for BMR unit ownership by:
  - 1. Determining applicant eligibility pursuant to criteria established in cooperation with City.
  - 2. Operating a computer-generated lottery system to establish a numerical list of eligible households for the available BMR unit. This numerical list is used to establish the priority order of the potential buyers.
  - 3. Preparing and mailing notices for house tours to the topmost households from the numerical lottery list.
  - 4. Verifying applicants' attendance at the open house and established interest in the available BMR unit. Removing households that are not interested in the available BMR unit from the numerical list.
  - 5. Working with lenders on pre-approvals for topmost households on the list of eligible and interested buyers.
- iv. Maintain an up to date list of approved mortgage providers on the Marin Housing Authority website. Provide lender training, BMR program documents and requirements to lending institution's underwriting department, and address questions from underwriters.
- v. Engage licensed real estate broker/agents to list, market, and complete the purchase and sale of BMR units in accordance with industry standards, while following the BMR Program requirements.
- vi. Subject to availability, provide assistance to BMR unit buyers with obtaining down payment assistance. Assistance programs may include, CalHome and other programs available to eligible buyers within the City.
- vii. Utilize the most current versions of the following documents and obtain all necessary signatures thereon, in connection with all BMR unit conveyances during the term of this Agreement:
  - 1. *Resale and Refinancing Restriction Agreement and Option to Purchase*
  - 2. *Buyer's Disclosure Statement – Marin County Below Market Rate Home Ownership Program*
  - 3. *Authority Deed of Trust and Security Agreement securing the Resale and Refinancing Restriction Agreement and Option to Purchase*
- viii. Record or cause to be recorded, as appropriate, the *Resale and Refinancing Restriction Agreement and Option to Purchase*, the *Authority Deed of Trust and Security Agreement Securing the Resale and Refinance Restriction Agreement*, and a *Request for Copy of Default Notice* as appropriate.
- ix. Calculate resale price evaluations for existing BMR units for purposes of resale or refinance.



- x. Provide ongoing assistance to BMR owners with issues such as capital improvements, special assessments, etc.
- xi. Process requests from BMR owners to address life changes such as adding or removing parties from title, inheritance issues, etc.
- xii. When a BMR unit owner notifies Authority of owner's intention to sell their unit; request from such owner information regarding repairs or upgrades completed to that owner's BMR unit, conduct an inspection of the unit to assess the work that will be required to resell the unit to another first time homebuyer and, if appropriate, adjust the sales price for such owner's BMR unit.
- xiii. Up to 4 % of the total sales price of each BMR unit will be payable to a broker /agent and to the Authority ("brokerage fee"). The precise distribution of the brokerage fee will be dependent on whether there is dual representation of the BMR unit buyer and seller by an agent / broker. When a buyer is found from among the list of existing BMR applicants in the lottery drawn by the Authority, the Authority shall retain 1% of the brokerage fee.

## **II. SALE AND RESALE OF EXISTING BMR UNITS**

### **A. BELOW MARKET VALUE RESALE**

When a BMR unit owner wishes to sell their BMR unit, City may elect to retain such BMR unit within the BMR Program but to increase the sales price of such BMR unit for the subsequent purchaser of that BMR unit provided the increased sales price remains affordable to the unit's designated income level.

If City desires to increase the resale price of a BMR unit pursuant to the immediately foregoing sentence, City must provide written notice to Authority within 10 days of receiving notice from Authority that a BMR unit will become available for resale.

Up to 4 % of the total sales price of each BMR unit will be payable to a broker /agent and to the Authority ("brokerage fee"). The precise distribution of the brokerage fee will be dependent on whether there is dual representation of the BMR unit buyer and seller by an agent / broker. When a buyer is found from among the list of existing BMR applicants in the lottery drawn by the Authority, the Authority shall retain 1% of the brokerage fee.

### **B. MARKET VALUE SALE**

City may elect to release a BMR unit from the BMR Program and its affordability and resale restrictions by directing the Authority in writing to resell a BMR unit at its market value ("Market Value Sale"). If City desires for a Market Value Sale to occur, City must provide written notice to Authority within 10 days of receiving notice from Authority that a BMR unit will become available for sale.

### C. PROCEEDS FROM MARKET VALUE SALE

After Authority's consummation of a sale pursuant to Section II (A) and II (B) above, Authority shall retain the difference between the actual sale price of the BMR unit subject to such sale, less (1) brokerage fees and all reasonable and customary closing fees, (2) satisfaction of all valid liens that the BMR unit is subject to if such lien(s) were permitted by relevant agreements with Authority and/or City governing such BMR unit, (3) such amount as BMR unit owner is entitled to receive at the close of a sale of their BMR unit pursuant to such owner's recorded resale restriction agreement(s) with Authority and/or City that govern the sale of their BMR unit, and (4) any funds that City owes to Authority pursuant to this Agreement.

Funds remaining after satisfaction of Section II. (C) above shall be maintained in an account for the benefit of the City ("City Account").

## III. ADMINISTRATIVE SERVICES

### A. BMR PROGRAM MONITORING SERVICES

- i. Authority shall perform annual monitoring of no less than one-third of City's existing BMR units to attempt to verify compliance with the Resale Restrictions Agreement such as continuing owner occupancy, no subleasing, no refinancing without approval, no over-encumbrances etc.
- ii. Authority shall provide annual status reports to City on BMR sales activity, refinancing activity, monitoring results, and other related information that is reasonably requested by the City (e.g., current affordability levels, issues, and concerns, etc.).

### B. INFORMATION AND EDUCATION

- i. Upon request, Authority shall provide City, BMR Program participants and lenders with information concerning procedures and/or restrictions regarding BMR unit conveyance refinancing, and determination of affordability levels and capital improvements.
- ii. Authority shall provide, or cause to be provided, HUD approved first time homebuyers' education. The HUD approved curriculum includes budgeting, financial preparedness, credit, qualifying for a loan, loan types and terms, refinancing, fair housing laws, and homeowners' associations.
- iii. Authority shall provide Median Household Income information to City and prospective developers, and provide relevant information concerning Income

Limits and Median Income, the relationship between those factors, and how those factors typically are used to determine affordability.

#### C. AUTHORITY'S MANAGEMENT OF CITY ACCOUNT

Upon approval by the City, this account may be used by the Authority for the benefit of the City BMR program including, but not limited to; the payment of legal fees, the acquisition of BMR units, payment of the Authority's annual fee, reduction in affordability levels of BMR units, and/or capital improvements to BMR units prior to resale.

### IV. OPTION EVENTS AND OTHER LEGAL DISPUTES

#### A. ENFORCEMENT SERVICES BY AUTHORITY STAFF FOR OPTION EVENTS

Should the Authority identify BMR Program violations by any BMR unit owners ("Option Events"), the Authority shall promptly notify the City and, upon City's request, the Authority shall contact such BMR unit owner and demand correction of their violation(s). The Authority, with consent of the City, will attempt to enforce the BMR Resale Restrictions Agreement to secure and preserve the BMR unit for the City and enforce compliance with the BMR Program, or as otherwise directed by the City with respect to each such BMR unit. The services performed by Authority pursuant to this sub-section IV(A) shall be referred to as "Enforcement Services."

#### B. FEE TO AUTHORITY FOR ENFORCEMENT SERVICES

Enforcement Services will be provided on a case-by-case basis only upon City's written consent pursuant to sub-section IV(A), immediately above. Enforcement Services will be provided by an employee of the Authority, and the Authority will charge City \$95 per hour if the Enforcement Services are performed by a non-attorney and \$145 per hour if the Enforcement Services are performed by an employee of the Authority that is an attorney. Charges for Enforcement Services will be at ¼ hour increments, at a maximum limit of \$1,900 per BMR unit. The Authority will submit detailed monthly billings to City reflecting the Enforcement Services performed. Payment is due on all billings net 30 days from the date City receives the invoice. No fees shall be billed to City in excess of the above maximum without City's prior written approval. Compensation for Enforcement Services will be in addition to the compensation provided to Authority under other provisions of this Agreement.

#### C. LEGAL SERVICES IN THE EVENT OF BMR DEFAULT OPTION EVENTS.

BMR units may be subject to legal disputes and retaining outside legal counsel to perform services relating to certain BMR units may become appropriate (with respect to each such BMR unit, a "Dispute"). The Authority will notify City within a reasonable period of time within which Authority learns of a Dispute. In the event Authority notifies City of a Dispute, the Authority may, with City's prior written consent, retain outside legal counsel of Authority's choosing to represent the Authority with respect to each Dispute. The Authority will manage and provide instruction to outside legal counsel, keep City reasonably informed and forward

legal counsel's advice to City concerning each Dispute. Any time expended by Authority employees regarding a Dispute shall also constitute Enforcement Services and will be billed pursuant to Section IV(B), above.

D. FEE TO AUTHORITY TO REIMBURSE 3<sup>RD</sup> PARTY LEGAL SERVICES.

The Authority will provide Enforcement Services with respect to each Dispute until the Dispute is resolved. Upon attorneys' fees and costs incurred for a Dispute reaching \$5,000 (to be billed on an hourly basis pursuant to standard industry practices, with detailed billings to be provided to City), the City will be briefed on the recommended course of action provided by legal counsel and the City shall provide general direction to Authority with respect to each Dispute.

E. EXERCISE OF OPTION TO PURCHASE PURSUANT TO RESALE RESTRICTION AGREEMENT

i. *Notice of Option*

In the event the Authority identifies an Option Event, and option to purchase a BMR Unit may be exercised, the Authority shall:

Notify City in writing within five (5) working days of Authority learning that an option to purchase may be exercised with respect to a BMR unit (the "Notice").

The Notice shall include the option-triggering event, the anticipated resale price, and any other information that may be available to Authority that will assist City in deciding on a course of action.

Within ten (10) working days of receipt of the Notice, City shall provide written instructions to the Authority directing the Authority to (1) exercise the Option, (2) assign to City the right to exercise the Option to purchase the BMR unit with City assuming responsibility to enforce the *Resale Restriction Agreement* and *Deed of Trust and Security Agreement*, or (3) file a *Notice of Abandonment*.

ii. *Exercise of Option*

If the City requests that the Authority exercise the Option, the Authority shall:

Utilize funds provided by the City; or

Utilize Authority's line of credit if Authority determines it would not interfere with Authority's operations. The Authority shall be reimbursed by City such amount that Authority contributes toward the exercise of an option. This reimbursement shall occur immediately upon re-sale of the BMR unit subject to such option or 90 days from the Authority's exercise of the Option, whichever occurs earlier.