

FUNDING AGREEMENT

BETWEEN

INLAND EMPIRE HEALTH PLAN

AND

CITY OF SAN BERNARDINO

FUNDING AGREEMENT

This Funding Agreement (“Agreement”) is made and entered into by and between Inland Empire Health Plan (“IEHP”), a local public entity of the State of California, and City of San Bernardino (“RECIPIENT”), a California charter city and municipal corporation, with reference to the following facts:

RECITALS

WHEREAS, RECIPIENT wishes to accept from IEHP, and IEHP wishes to extend to RECIPIENT funding specified herein to support the development of the San Bernardino City HOPE Campus (“PROJECT”); and

WHEREAS, in exchange for the funding from IEHP, RECIPIENT will provide IEHP with increased access to recuperative care and housing navigation services for the community and IEHP Members in the City of San Bernardino; and

WHEREAS, the funding from IEHP will support construction costs and related expenses associated with development of the San Bernardino City HOPE Campus.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The recitals above are true and correct and are hereby incorporated herein by this reference.

2. ~~SERVICES~~

- A. Description of Services. RECIPIENT shall perform all the duties and responsibilities outlined in the Scope of Work; as set forth in Attachment A, attached hereto, and incorporated herein by reference.
- B. Scope of Services. RECIPIENT shall furnish labor necessary to perform in a complete, skillful and professional manner all those services described in Attachment A.

3. PERIOD OF PERFORMANCE

The term of this Agreement shall become effective as of the date of last signature (“Effective Date”), and shall continue in effect until June 30, 2026, unless terminated as specified in Section 7 (TERMINATION PROVISIONS).

4. FUNDING

IEHP agrees to issue funds in accordance with Attachment B and incorporated herein by reference as though set forth in full. The total amount for the term of this Agreement shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000) ("Funding"). In no event shall funds exceed the Funding amount without a written amendment to this Agreement authorizing such increase.

5. INDEPENDENT CONTRACTOR

It is understood and agreed that the relationship between the parties is an independent contractor relationship. Neither party, including its officers, agents, employees or subcontractors, shall be considered to be employees of the other, nor entitled to any benefits payable to such employees, including Workers' Compensation Benefits. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.

6. INDEMNIFICATION

RECIPIENT shall indemnify, and hold harmless IEHP, its Governing Board, directors, officers, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability, loss, settlement, claim, demand, and expense of any kind, based or asserted upon any act or omission of RECIPIENT, its employees, subcontractors and agents relating to or in any way connected with the funding of monies to RECIPIENT and/or the accomplishment of the work or performance of service under this Agreement. RECIPIENT shall defend the Indemnitees in any claim or action based upon any such alleged acts or omissions, at its sole expense, which shall include all costs and fees, including, but not limited to, attorney fees, cost of investigation, defense, and settlement or awards. The terms of this Section shall survive the termination of this Agreement.

7. INSURANCE

Throughout the term of this Agreement, RECIPIENT shall maintain, at its sole cost and expense, insurance coverage RECIPIENT deems prudent and customary in the exercise of RECIPIENT's business operations, in amounts as may be necessary to protect RECIPIENT and their officers, agents, and employees, as applicable, in the discharge of its responsibilities and obligations under this Agreement.

8. TERMINATION PROVISIONS

In the event that RECIPIENT does not fulfill their obligations as set forth herein, the portion of funds that remain unutilized to support RECIPIENT shall be returned to IEHP.

Additionally, IEHP may terminate this Agreement, effective immediately upon written notice, if IEHP determines that RECIPIENT has breached a material provision of this Agreement. IEHP shall give RECIPIENT written notice of the breach by mailing the written notice by IEHP to RECIPIENT via U.S. Postal Service Certified Mail, which shall constitute prima facie evidence of delivery. RECIPIENT shall have **thirty (30)** days after receipt of written notice of breach to cure said breach. In the event RECIPIENT fails to cure the breach, the Agreement shall be terminated, and RECIPIENT shall refund the portion of funds that remain unutilized.

9. ASSIGNMENT AND DELEGATION

RECIPIENT may not sell, assign, transfer, or otherwise convey this Agreement without the prior express written consent of IEHP. Any attempted assignment of this Agreement not in accordance with this Section shall be null and void.

10. ALTERATION AND/OR AMENDMENT

No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the Governing Board of IEHP or designee may authorize any alteration or revision of this Agreement on behalf of IEHP. Notwithstanding the foregoing, amendments required due to legislative, regulatory or other legal authority do not require the prior approval of RECIPIENT and shall be deemed effective immediately (or such other time frame as required by law or regulation) upon RECIPIENT's receipt of notice. Notice of amendments required by law, regulation or other legal authority may be given to RECIPIENT via regular mail at the address provided in Section 15. NOTICES.

11. NONDISCRIMINATION

This Agreement hereby incorporates by reference the provisions of *Title 2, CCR, Sections 11105 et seq.*, as may be amended from time to time. CONTRACTOR agrees to comply with the provisions of *Title 2, CCR, Sections 11105 et seq.*, and further agrees to include this Nondiscrimination Clause in any and all subcontracts to perform services under this Agreement.

12. CONFLICT OF INTEREST

RECIPIENT shall have no interest, and shall not acquire any interest, direct or indirect, which will unlawfully conflict in any manner or degree with the performance of services required under this Agreement.

13. EXECUTIVE ORDER N-6-22

On March 4, 2022, California Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs all California state agencies and departments to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. All contractors and grantees are obligated to comply with the Economic Sanctions. Accordingly, should the State of California (the State) or IEHP determine RECIPIENT is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. RECIPIENT shall be provided with advance written notice of such termination, allowing RECIPIENT at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the State or IEHP.

14. PUBLIC WORKS PREVAILING WAGE AND CONTRACTOR REGISTRATION

Certain labor categories under this Project may be subject to prevailing wages as identified in the State of California Labor Code commencing at sections 1720 et seq. and 1770 et seq. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial Relations (“DIR”). Copies of the State of California wage schedules are available for review at www.dir.ca.gov/dlsr/. In addition, a copy of the prevailing rate of per diem wages will be made available at the City’s Public Works Department upon request. The successful General Contractor Team shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the General Contractor Team to whom the contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the Construction Contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the DIR. No Proposal will be accepted, nor any contract entered into without proof of the Proposer’s and subcontractors’ current registration with the DIR to perform public work. If awarded a contract, the General Contractor Team and its subcontractors, of any tier, shall maintain active registration with the DIR for the duration of the project. The contract awarded pursuant to this proposal may also be subject to compliance monitoring and enforcement by the DIR.

15. NOTICES

Other than correspondences for which email communication is expressly reserved pursuant to the terms of this Agreement, all notices required or contemplated by this Agreement shall be delivered to the respective parties in the manner and at the addresses set forth below or to such other address(es) as the parties may hereafter designate, in writing. Such notices will be deemed given if sent by certified United States mail or commercial courier, at the time of receipt confirmed by corresponding documentation.

IEHP:

Jarrold McNaughton, MBA, FACHE
Chief Executive Officer
IEHP
10801 Sixth Street
Rancho Cucamonga, CA 91730
(909) 890-2000
[cc to dept if necessary]

RECIPIENT:

City of San Bernardino
Rochelle Clayton
Acting City Manager
201 North E Street
San Bernardino, CA 92401
(909) 384-5122

16. SEVERABILITY

In the event any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement will continue in full force and effect.

17. WAIVER

A waiver by a party of any breach of any one (1) or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.

18. GOVERNING LAW; VENUE

- A. The provisions of this Agreement shall be construed in accordance with the laws of the State of California, excluding its conflicts of law provisions.
- B. The provisions of the Government Claims Act (*California Government Code Sections 900 et seq.*) must be followed for any disputes under this Agreement.
- C. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law) courts located in the counties of San Bernardino or Riverside, State of California.

19. LIMITATION OF LIABILITY

In no event shall either Party be liable for consequential, indirect, or incidental damages, including, without limitation, lost profits, arising out of this Agreement.

20. COUNTERPARTS; SIGNATURE

This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument. The parties' faxed signatures, and/or signatures scanned into PDF format, shall be effective to bind them to this Agreement.

21. ENTIRE AGREEMENT

This Agreement, including all attachments, which are hereby incorporated in this Agreement, supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.

22. COMPLIANCE WITH LAW

The Parties shall observe and comply with all applicable local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the parties hereto certify that the individuals signing below have authority to execute this Funding Agreement on behalf of their respective organizations and may legally bind them to the terms and conditions of this Funding Agreement, and any attachments hereto. The parties have signed this Funding Agreement as set forth below.

RECIPIENT:

By: _____

Rochelle Clayton
Acting City Manager

Date: _____

INLAND EMPIRE HEALTH PLAN:

By: _____

Jarrod McNaughton, MBA, FACHE
Chief Executive Officer

Date: _____

By: _____

Chair, IEHP Governing Board

Date: _____

Attest: _____

Secretary, IEHP Governing Board

Date: _____

Approved as to Form:

By: _____

Anna W. Wang
Vice President, General Counsel
Inland Empire Health Plan

Date: _____

ATTACHMENT A
SCOPE OF SERVICES

SCOPE

RECIPIENT seeks funding that will support the construction and development of San Bernardino City HOPE Campus, which is a recuperative care and housing navigation center that will assist both the community and IEHP Members in accessing necessary housing services. San Bernardino City HOPE Campus will provide interim housing and medical respite for unhoused individuals recovering from a chronic or acute health condition. Additionally, the campus will provide housing navigation, case management, and wraparound supportive services, thereby reducing potential health complications and hospital readmissions.

SUCCESS MEASURES

In exchange for the Funding described herein, RECIPIENT shall provide the following notices to IEHP:

Execution

- RECIPIENT shall submit invoice to IEHP upon execution of final Funding Agreement.

Construction

- RECIPIENT shall notify IEHP within when 30 days of construction commencement/groundbreaking. Notification shall be made in accordance with Section 15. Notices of this Agreement.

Completion

- RECIPIENT shall notify IEHP within 30 days of construction completion. Notification shall be made in accordance with Section 15. Notices of this Agreement.

ATTACHMENT B
FUNDING SCHEDULE

IEHP will provide RECIPIENT with funding in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000), which shall be disbursed as follows:

Deliverable	Amount	Frequency
Up-front payment for planning and materials	\$1,000,000	One time cost Due within 30 days of the invoice submitted to IEHP following full execution of the Agreement.
Begin construction	\$250,000	One time cost Due within 30 days of notice to IEHP the construction has commenced
Complete construction	\$250,000	One time cost Due within 30 days of notice to IEHP that construction has been completed

