



CITY OF EAST PALO ALTO
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT
1960 TATE STREET
EAST PALO ALTO, CA 94303

To: Interested Parties
From: Yajaira Morales, Housing Project Manager
Date: March 14, 2024
Subject: RFP for Administration of the City's Below Market Rate Program

I. Purpose of This Request for Proposal (RFP)

The purpose of this RFP is for the City of East Palo Alto (City) to identify a partner to administer its Below Market Rate (BMR) program. The selected entity will be responsible for administrative activities including, but not limited to:

1. Acting as the main point of contact for existing and new BMR owners, renters, and landlords.
2. Processing refinance, resale, for-sale, for-rent, and other real estate related transactions related to the BMR portfolio on behalf of the City.
3. Annual monitoring and non-displacement enforcement of the BMR portfolio, with protecting BMR residents from displacement as a primary principle.
4. Additional enforcement activities associated with annual monitoring activities, including working with City Attorney's office, code enforcement, and supporting private investigators with site visits and research.
5. Submitting biannual reports to the City detailing the latest activities, developments, and status of the portfolio.
6. Creating educational materials, presentations, and workshops for existing and new BMR owners, renters and landlords to continue to inform them about their compliance requirements.
7. Potentially processing BMR administration fees paid by homeowners in BMR program.

II. Key Items to Address in Response

The City desires a time-and-materials contract with a professional organization with the necessary expertise to provide administration of the City's BMR program. Key elements of the response should include:

1. A description of the respondent's experience and expertise administering BMR programs for public agencies, including the following detail:
 - a. Experience underwriting, processing, and closing BMR transactions on behalf of a public agency;
 - b. Experience providing compliance monitoring services for BMR ownership and rental units on behalf of a public agency, supporting BMR owners to

maintain or return to compliance, supporting BMR landlords to market their BMR ownership or rental units following fair housing laws, and assisting with the agency's enforcement when necessary to protect program assets;

- c. Experience acting as the primary program representative with the community on behalf of a public agency;
 - d. Experience would be within the last three years and respondent must demonstrate that the organization could perform immediately; and
 - e. A list of contacts at those agencies.
2. Compensation. Respondent shall provide detailed information regarding the compensation that respondent would expect to receive for each service outlined in this RFP. Respondent shall also provide the hourly fee schedule for items that may be on a time and materials basis. The compensation schedule should be provided in menu format, specifying an itemized cost/value that correlates to each proposed service to be rendered.

The rate schedule should include at minimum the following:

- a. Set-up cost (if any) – note we are seeking projects with minimal to no set-up costs
 - b. Annual Compliance Fee Per File (whether for-sale or rental)
 - c. Cost per inquiry (whether different from hourly fee)
 - d. Thorough review of each BMR File (whether different from hourly fee)
 - e. Cost per resale (whether Program-driven with waitlist, or Buyer-driven and no waitlist)
 - f. Cost per marketing units and description of marketing activity
 - g. Cost per lottery
 - h. Cost per refinance
 - i. Cost per payoff
 - j. Cost per enforcement activity/per case
 - k. Cost per workshop
 - l. Hourly rates
 - m. Reimbursable Expenses (if any, and would require City authorization to proceed)
 - n. Estimated total annual costs based on anticipated activity
3. A list of any additional relevant services (on a time-and-material basis) that respondent could provide if desired by the City, such as realtor services, appraisals, file digitizing, and identifying project funding sources.

III. Evaluation Criteria

The City will evaluate proposals solely based on respondent's response to items in this RFP:

Table 1: Evaluation Criteria

Criteria	Description	Possible Points
Experience	Respondent shall demonstrate experience administering BMR programs for public agencies, with successful results, and experience working in East Palo Alto or with East Palo Alto residents.	60
Capacity to Perform	Respondent shall demonstrate the capacity to respond to the public, the City, and other stakeholders in a timely manner. In addition, Respondent shall have the capacity to process, close, and otherwise facilitate numerous transactions related to the City's BMR program at any given time.	40
Extra Credit Points	Local organizations (from the City of East Palo Alto) will receive bonus points. Organizations should be up to date on their business licenses and prepared to provide documentation, if needed.	5

IV. Existing Activity and Types of Units

The City’s BMR portfolio consists of The City’s affordable housing stock is comprised of two types of units: home ownership units, subject to resale restrictions and rental units, subject to a regulatory agreement.

The BMR portfolio results from: 1) former Redevelopment Agency programs; 2) the City’s Inclusionary Housing Ordinance (MuniCode 18.37) that requires market rate developers to provide affordable units; and 3) City loan agreements, such as the City’s CalHome ADU/JADU Loans, that provides assistance to build an ADU/JADU in exchange for renting the ADU unit at an affordable rate during the duration of the loan agreement.

To assist interested parties with developing a competitive proposal, the following data describes the estimated scale of anticipated BMR services and activities, based on past activity.

Table 2: BMR Portfolio Activity

Item	Estimated Amount
BMR Portfolio	
Current Total Number of Units in City’s BMR Portfolio	53 Ownership
Anticipated New Inclusionary Housing Units in 2024	2 Rental 3 Ownership
Anticipated New CalHome Units in 2024	5 Rental
Sales and Rentals	
Anticipated Number of Sales or Rentals Per Year	6
Refinances	
Number of Refinances Between 2019-2023	4
Anticipated Number of Refinances Per Year	1
Resales	
Number of Resales Between 2019-2023	3
Anticipated Number of Resales Per Year	1
Loan Payoffs	
Number of Loan Payoffs Between 2019-2023	3
Anticipated Number of Loan Payoffs Per Year	1
Enforcement	
Number of Open Enforcement Cases	23
Delinquent Down-Payment Assistance Loan	1
Non-Compliant Occupancy	4
Non-Compliant Refinance, Low Risk	13
Non-Compliant Refinance, Higher Risk	1
Non-Compliant Transfer to Living Trust or Family	4

V. Monitoring and Enforcement of Homeownership Units:

1. Loan Repayments

For some of the homeownership units regulated by the City, the City provided loans for down payments or closing costs. These loans are required to be repaid on an amortization schedule determined at the time the loan was entered into. The City has contracted with AmeriNational Community Services to service these loans. As long as the City contract with AmeriNational continues, City staff can rely upon AmeriNational to collect payments and send notices of default for nonpayment. City staff will need to participate in decisions to foreclose in the event of nonpayment, but AmeriNational will inform the City before those decisions need to be made.

2. Resale Restrictions

The primary monitoring requirements for homeownership units relate to the Resale Restrictions that each homeowner entered into with the City at the time of acquisition of the home. The City's Resale Restriction Agreement has evolved over time so individual agreements may vary depending upon the development, where the home is located and when the restriction was entered into. Below are the standard requirements based on the City's latest version of the Resale Restriction.

- (a) **Owner Occupancy Certification:** Annually each homeowner is supposed to submit to the City an Owner Occupancy Certification that the owner is occupying the home as their principal residence. The most recent resale restrictions call for the homeowners to submit the Owner Occupancy Certification on February 1st of each year. The Owner Occupancy Certification is important to make sure that the original homeowner continues to occupy the unit, is not renting the unit and in particular has not sold the unit without providing the City notice of the sale. If an Owner Occupancy Certification is not received from a homeowner, the City is supposed to follow up to make sure that the home continues to be owner-occupied.

Please note: The Resale Restrictions for the Windriver Homes at 1962 Bayshore do not require annual Owner Certifications. For homes at the University Square Project that continue to be occupied by the original homebuyer, Owner Occupancy Certifications are also not required. The Bay Oaks Project is monitored by Habitat for Humanity. The City does not believe that the homeowners are required to provide the City with Owner Occupancy Certifications.

- (b) **Transfers:** Owners of Resale Restricted Homes are required to give the City a Notice of Intent to Transfer before selling or otherwise transferring the home. The Resale Restriction Agreement specifies what is required to be included in the Notice to Transfer and a form of the notice is attached to most of the Resale

Restrictions. Upon receipt of a Notice of Intent to Transfer to the City in most instances has 30 days to respond. It is important that the City responds to these notices. Under the Resale Restriction Agreement, the City response can be:

- (1) The City intends to exercise its option to acquire the home.
 - i. Although the City may not want to purchase the home itself, it may want to exercise its option in order to assign the purchase option to a qualified household or a nonprofit. The intent of the purchase option is to ensure that the home remains affordable. If the City exercises the option, the purchase price is a restricted price that keeps the home affordable. At University Square the City's only option for keeping the home affordable is to exercise the option. If the City does not exercise the option, the homeowner can sell the unit at market price. The City is then supposed to receive the proceeds of the sale minus the price at which the City could have purchased the home.
- (2) Notification to the homeowner that the City is not exercising its option and directing the homeowner to sell the home to an eligible purchaser (either a very low income, low income or moderate-income household)
 - i. If the City does not exercise its option, the homeowner is required to sell the home to a qualified homebuyer at a restricted price (except at University Square.) The City's response to the homeowner in the event the City elects not to purchase the home must include the income requirements for an eligible purchaser and the maximum restricted price. The Resale Restriction will need to be consulted in order to determine the Maximum Restricted Sales Price and the income requirements for the homeowner.
 - ii. The original Resale Restrictions for the University Square homes does not require that the homeowner sell the home at a restricted price, however, the homeowner is required at the time of sale to pay to the City the difference between the restricted price and the actual purchase price received for the home.

Note- for many of the University Square homes the City failed to record a deed of trust securing the amounts to be paid to the City at resale which makes on-going monitoring of the homes to make sure that no sale has occurred more important. Title companies are known for missing resale restrictions, so it is possible for homes to sell without the City receiving notice of the sale and not receiving its share of the sales proceeds.

(c) **Refinancing:** Homeowners are allowed under the Resale Restrictions to refinance their mortgage on the home, but the Resale Restrictions limit the total amount of financing that can be placed on the home. The homeowner is supposed to provide the City with notice requesting approval of the refinancing but often the City hears about the refinancing when the lender requests that the City sign a subordination agreement. If the City receives a request for approval of refinancing or subordination, the City needs to determine the maximum restricted purchase price for the home at that time, which is the maximum amount of financing that can be secured by the home. The resale restriction needs to be consulted as well to make sure there are no other restrictions on refinancing.

(d) **Notices of Default:** The City's resale restriction and any deeds of trust securing performance under the Resale Restriction are typically subordinate to the first mortgage on the home. In some instances, the City recorded Requests for Notices of Default requiring that the senior lenders provide the City with notice if there is a default on the senior loans. If the City receives notice of a default on a senior loan, the City needs to determine whether it wants to exercise its option to purchase the home in order to prevent a foreclosure. A foreclosure of a senior loan will result in the City's interest in the home being wiped out. The City may elect to exercise its option in order to preserve the affordability of the home. If the City elects to exercise its option it will need to move quickly to prevent foreclosure. If the City does not elect to exercise its option, it may have other avenues for preventing a foreclosure including working with the lender and the homeowner to correct the defaults. **The City does not want to ignore any Notice of Default.**

3. Best Practices: The annual monitoring should include a minimum of three steps.
- (a) Reviewing the assessor's records annually for changes in title and to ensure that the homeowner's exemption is still being claimed.
 - (b) Sending annual notices verifying owner occupancy or following up with homeowners that do not submit the required annual Owner Occupancy Certification. If the homeowner does not respond to the notice the City should have a procedure for following up which could include a second notice, a visit to the home and a review of the property records to determine if the home has changed hands.
 - (c) Checking to see if any new documents have been recorded against the title of each home to identify subordinate loans or other liens that may jeopardize the City's interest in the property. Many counties now show all recorded documents online. An alternative is to establish a contract with a title company to review annually any new recorded documents.

The administrator should assist the City in sending timely responses (within 30 days) to notices from the homeowners or other lenders. Failure to respond can jeopardize the City's ability to maintain the homes' affordability.

VI. Monitoring and Enforcement of Affordable Rental Units

Under the Redevelopment Law, which remains in effect and applies to the City as the housing successor to the former Redevelopment Agency (RDA), the City is required to monitor RDA assisted affordable housing. The City must also monitor other rental units that enter the BMR portfolio through the Inclusionary Housing Ordinance (via deed-restriction) or loan programs such as CalHome (through other regulatory agreements).

Redevelopment Agency regulatory agreements for the developments require that the property owners submit an annual monitoring report to the City. The annual reports are to include a statistical report, including household size, household income and rent. Each of the existing Regulatory Agreements includes the date by which the annual report must be submitted. Note: some regulatory agreements state a specific date annual reports are due.

Upon receipt of the annual report, the City should review the report to ensure that the project is in compliance with the requirements of the regulatory agreement. The City is not required to verify the information provided by the project owner, but some cities do review the property owners' records from time to time to make sure that the reports submitted are accurate. The review can consist of reviewing a sampling of tenant files rather than a complete review. From time to time, the City may request assistance in reviewing these reports.

The administrator will work with the City to come up with recommendations for annual monitoring of other rental units resulting from the Inclusionary Housing Ordinance or other City loan programs. Additional support needed will include: working with developers or landlords to develop a [Fair Housing and Marketing Plan](#) for their inclusionary housing compliance, assisting with implementation of the City's Local Preference policy, income certifying applicants, monitoring affordability compliance, monitoring income qualifications via annual income verifications, and more.

VII. Submittal Requirements and Next Steps

Questions: Please forward any questions regarding the RFP to Housing Project Manager, Yajaira Morales, at housing@cityofepa.org. Questions are due by **Thursday, March 21, 2024**. City staff will respond no later than Tuesday, March 26, 2024.

Due Date: Respondents must email an electronic copy of the proposal at housing@cityofepa.org and mail two hard copies of the proposal, postmarked by **12:00 PM on Thursday, April 11, 2024**, to the following address:

City of East Palo Alto
Attn: Yajaira Morales
1960 Tate Street
East Palo Alto, CA 94303

Interviews: 30-minute interviews will be conducted on Friday, April 12, 2024 or later. Please indicate in a cover letter the potential time slot(s) you are available: 10-11am, 2-3pm, 3-4pm, 4-5pm.

City Council Consideration: City staff will review and evaluate any timely submitted proposals and will recommend a proposal for award to the City Council in May 2024.