



Boards of Commissioners Meeting

December 18, 2018

AGENDA

O (559) 443-8400

F (559) 445-8981

1331 Fulton Street

Fresno, California 93721

TTY (800) 735-2929

www.fresnohousing.org

Regular Joint Meeting of the Boards of Commissioners of the Fresno Housing Authority

5pm - December 18, 2018

1331 Fulton Street, Fresno, CA 93721

Interested parties wishing to address the Boards of Commissioners regarding this meeting's Agenda Items, and/or regarding topics not on the agenda but within the subject matter jurisdiction of the Boards of Commissioners, are asked to complete a "Request to Speak" card which may be obtained from the Board Secretary (Tiffany Mangum) at 4:45 p.m. You will be called to speak under Agenda Item 3, Public Comment.

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices, or translators should be made at least one (1) full business day prior to the meeting. Please call the Board Secretary at (559) 443-8475, TTY 800-735-2929 or email executiveoffice@fresnohousing.org.

5pm

PAGE #

1. Call to Order and Roll Call

2. Approval of agenda as posted (or amended)

The Boards of Commissioners may add an item to this agenda if, upon a two-thirds vote, the Boards of Commissioners find that there is a need for immediate action on the matter and the need came to the attention to the Authority after the posting of this agenda.

3. Public Comment

This is an opportunity for the members of the public to address the Boards of Commissioners on any matter within the subject matter jurisdiction of the Boards of Commissioners that is not listed on the Agenda. At the start of your presentation, please state your name, address and/or the topic you wish to speak on that is not on the agenda. Presentations are limited to a total of three (3) minutes per speaker.

4. Potential Conflicts of Interest – <i>Any Commissioner who has a potential conflict of interest may now identify the item and recuse themselves from discussing and voting on the matter. (Gov. Code section 87105)</i>	
5. Election of the 2019-2020 Officers – County Board of Commissioners	
6. Consent Agenda	
<i>All Consent Agenda items are considered to be routine action items and will be enacted in one motion unless pulled by any member of the Boards of Commissions or the public. There will be no separate discussion of these items unless requested, in which event the item will be removed the Consent Agenda and considered following approval of the Consent Agenda.</i>	
a. Consideration of the minutes of November 27, 2018	5
b. Consideration of Contract Renewal – Grounds Maintenance	13
c. Consideration of the Investment Policy	19
d. Consideration of the 2019 Agency Calendar	28
7. Informational	
a. Resident Services Presentation – Fresno County Library	30
b. Presentation on the 2019 Mixed Finance Budgets	31
c. Real Estate Development Update	35
8. Action	
a. Consideration of the 2019-2020 Agency Goals and Strategic Priorities	36
b. Consideration of the 2019 Agency Operations and Housing Assistance Program Budgets	41
c. Consideration of the Approval of the Legal Services Contract – General Counsel	47
d. Consideration of the Approval of the Legal Services Contract – Human Resources	74
e. Consideration of the Approval of the Legal Services Contract – Federal and State of California Matters	103
f. Consideration of the Approval of the Legal Services Contract – Affordable Housing Development	132
g. Consideration of the Approval of the Legal Services Contract – Unlawful Detainers	160
9. Commissioners’ Report	
10. Executive Director’s Report	212
11. Closed Session	
a. PUBLIC EMPLOYEE EVALUATION Title: CEO	
12. Report on Closed Session Matters	
13. Action	

- a. Consideration of the CEO Compensation

14. Adjournment

Minutes of the Joint Meeting
Of the Boards of Commissioners of the
HOUSING AUTHORITIES OF THE CITY AND COUNTY OF FRESNO

Tuesday, November 27, 2018

5:00 P.M.

The Boards of Commissioners of the Housing Authorities of the City and County of Fresno met in a regular session on Tuesday, November 27, 2018 at the offices of HACCF, located at 1331 Fulton Street, Fresno, California.

1. The regular meeting was called to order at 5:07 p.m. by Board Chair, Commissioner Jones, of the Board of Commissioners of the Housing Authority of City of Fresno. Roll call was taken and the Commissioners present and absent were as follows:

PRESENT: Adrian Jones, Chair
 Caine Christensen, Vice Chair
 Sharon Williams
 Ruby Yanez

ABSENT: Rueben Scott
 Stacy Vaillancourt
 Terra Brusseau

The meeting was called to order at 5:07 p.m. by Board Chair, Commissioner Sablan, of the Board of Commissioners of the Housing Authority of Fresno County. Roll call was taken and the Commissioners present and absent were as follows:

PRESENT: Stacy Sablan, Chair
 Venilde Miller
 Joey Fuentes
 Nikki Henry
 Cary Catalano
 Valori Gallaher

ABSENT: Mary G. Castro, Vice Chair

Also, in attendance were the following: Preston Prince, CEO/Executive Director, and Ken Price, Baker Manock and Jensen -General Counsel.

Commissioner Jones welcomed our newest City Commissioners Ms. Sharon Williams and Ms. Ruby Yanez. In addition, Commissioner Jones acknowledge and thanked Karl Johnson for his time as Commissioner for the City Board.

Mr. Prince acknowledged Mr. Johnson for his work as a City Commissioner.

Mr. Johnson briefly thanked the Fresno Housing Authority staff.

2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

There were no public comments.

COUNTY MOTION: *Commissioner Christensen moved, seconded by Commissioner Yanez, to approve the agenda as posted.*

MOTION PASSED: 4-0

COUNTY MOTION: *Commissioner Fuentes moved, seconded by Commissioner Miller, to approve the agenda as posted.*

MOTION PASSED: 6-0

3. PUBLIC COMMENT

There were no public comments presented.

4. POTENTIAL CONFLICTS OF INTEREST

There was no conflict of interest reported at this time.

5. CONSENT AGENDA

All Consent Agenda items are considered to be routine action items and will be enacted in one motion unless pulled by any member of the Boards of Commissions or the public. There will be no separate discussion of these items unless requested, in which event the item will be removed from the Consent Agenda and considered following approval of the Consent Agenda.

- a. Consideration of the Minutes of September 14, 2018, September 25, 2018, and October 23, 2018
- b. Consideration of Contract Renewal – Novogradac
- c. Consideration of Contract Renewal – Davis Farr

- d. Consideration of HOME Tenant-Based Rental Assistance (TBRA) Contract - City of Fresno
- e. Ratification of the Property Acquisition and HRFC Funding Commitment – Willow/Alluvial Avenues, Clovis, CA (City)
- f. Consideration of the 2019 Proposed Utility Allowance Schedules – Housing Assistance Programs and Low-Income Housing Tax Credit Programs

CITY MOTION: *Commissioner Christensen moved, seconded by Commissioner Yanez to approve the Consent Agenda Items A-F.*

MOTION PASSED: 4-0

COUNTY MOTION: *Commissioner Henry moved, seconded by Commissioner Gallaher to approve the Consent Agenda Items A-F.*

MOTION PASSED: 6-0

6. INFORMATIONAL

- a. Update on the 2019 Agency Budget and Goal Development

Ms. Emily De La Guerra presented on this topic.

- b. Real Estate Development Update

Mr. Michael Duarte presented on this topic of Real Estate Development.

Publicly speaking under this topic were the following:

Mr. Eric Payne, a community member, wanted to discuss areas of concern with Fresno Housing Authority staff. Mr. Payne mentioned concern around low poverty census tracks in West Fresno, and about the type and quality of housing the Fresno Housing Authority is bringing to the community. Specifically, how Fresno Housing serves our homeless population, how Fresno Housing communicates these issues with residents, and how properties are used and made available for residents.

Also, Mr. Payne stated concern about the use of the West Fresno property that is being utilized for a partnership with DSS, which is adjacent to the triangle property in West Fresno. He shared that at one-point Fresno Housing Authority staff disclosed the property was going to be used for temporary placement for housing until a permanent location could be agreed upon. He understands that those conversations are ongoing. Mr. Payne said he is willing to sit down and discuss it further with staff, and hopes to provide valuable input on these matters.

7. ACTION

Mr. Michael Duarte presented on Action Items a through c.

- a. Consideration of HRFC Pre-Development Funding Commitment – Orchard Apartments (Parlier)

CITY MOTION: *Commissioner Christensen moved, seconded by Commissioner Williams to approve the HRFC Pre-Development Funding Commitment-Orchard Apartments (Parlier).*

MOTION PASSED: 4-0

COUNTY MOTION: *Commissioner Catalano moved, seconded by Commissioner Henry to approve the HRFC Pre-Development Funding Commitment-Orchard Apartments (Parlier).*

MOTION PASSED: 6-0

- b. Consideration of HRFC Pre-Development Funding Commitment – Mariposa Meadows

CITY MOTION: *Commissioner Yanez moved, seconded by Commissioner Williams to approve the HRFC Pre-Development Funding Commitment – Mariposa Meadows.*

MOTION PASSED: 4-0

COUNTY MOTION: *Commissioner Catalano moved, seconded by Commissioner Gallaher to approve the HRFC Pre-Development Funding Commitment – Mariposa Meadows.*

MOTION PASSED: 6-0

- c. Consideration of the Conditional Purchase and Sale Agreement – Huron Land

CITY MOTION: *Commissioner Yanez moved, seconded by Commissioner Williams to approve the Conditional purchase and Sale Agreement-Huron Land.*

MOTION PASSED: 4-0

COUNTY MOTION: *Commissioner Miller moved, seconded by Commissioner Fuentes to approve the Conditional purchase and Sale Agreement-Huron Land.*

MOTION PASSED: 6-0

- d. Consideration of Contract Renewal – Boys and Girls Clubs of Fresno County

Ms. Angie Nguyen presented on this item.

CITY MOTION: *Commissioner Christensen moved, seconded by Commissioner Williams to approve the Contract Renewal – Boys and Girls Clubs of Fresno County.*

MOTION PASSED: 4-0

COUNTY MOTION: *Commissioner Henry moved, seconded by Commissioner Fuentes to approve the Contract Renewal – Boys and Girls Clubs of Fresno County.*

MOTION PASSED: 6-0

8. COMMISSIONERS' REPORT

Commissioner Jones shared that the goal was reached for the completion of the Commissioners' Handbook, and circulation of the handbook will be sometime next year. Commissioner Jones thanked the Commissioners that sent notes for the completion of this Handbook.

Grade level reading committee started to collect data; regarding the education level for the head of household participants. Commissioner Jones stated at one point it was initially thought the highest level of education for the participants in the campaign was the High school level. However, it is unsure, if this is a good baseline. This will be discussed further among the Committees.

In addition, Commissioner Jones shared she received good feedback on the Commissioner and CEO session at the NAHRO conference in October 2018. Commissioner Jones said the interaction between each Commissioner and CEO came from the two playing the newlywed game. At the request of the NAHRO CEO, this session will be repeated at the upcoming 2019 conference in Boston.

Commissioner Jones presented on the fourth week of the advocacy goals. She stated that 3600 letters were sent nationally, now the goal before December 7, 2018 is to send 3400 letters asking our lawmakers to finalize the fiscal year's budget in order to avoid government shutdown. She also requested that Commissioners participate more at the regional level.

Commissioner Sablan presented on Ballard Spahr's 13th Annual National Housing Symposium: Innovation by Generation-Current Housing Trends. One of the focuses was on health partnerships. Also, the panelist Kim Betancourt from Fannie Mae, presented on demographic trends in multifamily Housing: Past, Present and Future. Commissioner Sablan, thanked the Fresno Housing Authority for the opportunity to attend the conference.

Commissioner Henry thanked and congratulated Commissioner Jones and Mr. Prince for their presentation at the NAHRO conference.

Additionally, Commissioner Henry thanked Commissioner Catalano for nominating her for the leadership position.

Commissioners Henry stated Commissioners Fundamentals offered by NAHRO is a great tool for the Commissioners to be part of.

Commissioner Catalano stated that the NAHRO Conference offered great workshops, and that he would like Fresno to have a more active role at a National level workshop.

9. EXECUTIVE DIRECTOR'S REPORT

In addition to the written Director's report, the following items were announced:

- Mr. Prince briefly introduced the fourth year of the Focus Forward Publication.
- January 24, 2019 the Board Dinner is scheduled, please save the date. The dinner is to honor the accomplishments from 2018.
- Mr. Prince thanked Karl Johnson for his 4 ½ years of service as City Commissioner. Mr. Johnson's term expired, and Ms. Ruby Yanez has been appointed.
- Additional, Mr. Prince stated there are changes for Congressional District 21. He said to continue to build and maintain relationships with all elected leaders.
- Mr. Prince said that on December 4, 2018 and December 6, 2018 the Board of Supervisors and the City Council have on their agenda the resolutions to declare a "Shelter Crisis" and "State of Emergency" for our homeless crisis throughout the County. Mr. Prince added the Commissioners are invited to join Mr. Prince at these meetings.
- Fresno Housing Authority is sponsoring the Nothing but Net II event hosted on Wednesday, December 5, 2018 at 6:30 pm at the Maxie Parks Center. This game is where Southwest Fresno PD will play against Brian King and the youth of Fresno Street Saints. Fresno Housing will be providing a water booth for all participants and attendees.
- Mr. Prince thanked the staff and everyone who attended resident events at the Renaissance properties in honor of the Veterans and the Thanksgiving celebration.
- November 7 and 8, 2019 the author of the book "Evicted" Mathew Desmond will be in Fresno. Fresno Housing Authority will be working in collaboration with the California State University of Fresno and Fresno County Library to host his visit.

10. CLOSED SESSION

The Boards went into closed session at approximately 7:16 pm.

- a. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Pursuant to Government Code § 54954.5(b))
Property: APN: 466-191-09; 1828 Broadway St., Fresno, CA 93721
Agency Negotiator: Preston Prince
Negotiating Parties: Fresno Housing Authority; Bains Sukhwant Singh & Gian Kaur Trs
Under negotiation: Price and Terms
- b. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Pursuant to Government Code § 54954.5(b))
Property: APN: 416-040-09; 130 W. Barstow Ave., Fresno, CA 93704
Agency Negotiator: Preston Prince
Negotiating Parties: Fresno Housing Authority; Gary R. Perez
Under negotiation: Price and Terms
- c. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Pursuant to Government Code § 54954.5(b))
Property: 1311 N Hulbert, Fresno, CA 93728
Agency Negotiator: Preston Prince
Negotiating Parties: Fresno Housing Authority; Rod DeLuca, RJK Enterprises, L.P.
Under negotiation: Price and Terms
- d. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code section 54956.9(d)(1)
Erickson v. Fresno Housing Authority (17 CECG03365)
- e. CONFERENCE WITH LABOR NEGOTIATORS
(Pursuant to Government Code §54957.6)
Agency designated representatives: (Tammy Townsend, Emily De La Guerra, Angie Nguyen, Hilda Reeves, Scott Fetterhoff, Summer Nunes)
- f. PUBLIC EMPLOYEE EVALUATION
Title: CEO
- g. PUBLIC EMPLOYEE APPOINTMENT
Pursuant to Government Code §54597
Title: Legal Counsel
- h. Consideration of Property Acquisition – 1311 N. Hulbert, Fresno, CA 93728

The Boards returned to open session at approximately 8:32 p.m.

11. REPORT ON CLOSED SESSION

There were no actions to report at this time for items a, b, c, e, f, and h.

Action on closed session item d.

CITY MOTION: Commissioner Yanez moved, seconded by Commissioner Christensen the action was anonymous to accept the settlement agreement for the case of Erickson v. Fresno Housing Authority.

MOTION PASSED: 4-0

COUNTY MOTION: Commissioner Fuentes moved, seconded by Commissioner Gallaher the action was anonymous to accept the settlement agreement for the case of Erickson v. Fresno Housing Authority.

MOTION PASSED: 6-0

12. ACTION

a. Consideration of Tentative Agreement – SEIU

CITY MOTION: Commissioner Yanez moved, seconded by Commissioner Christensen to approve the Tentative Agreement – SEIU.

MOTION PASSED: 4-0

COUNTY MOTION: Commissioner Henry moved, seconded by Commissioner Miller approve the Tentative Agreement – SEIU

MOTION PASSED: 6-0

13. ADJOURNMENT

There being no further business to be considered by the Boards of Commissioners for the Housing Authorities of the City and County of Fresno, the meeting was adjourned at approximately 8:32 p.m.

Preston Prince, Secretary to the Boards of Commissioners

BOARD MEMO

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Fresno, California 93721
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TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: Dec. 18, 2018

AGENDA ITEM: 6b

AUTHOR: Jeremy Matthews

SUBJECT: Consideration of Contract Extension for Grounds Maintenance Services

Executive Summary

The purpose of this memo is to request approval from the Boards of Commissioners to renew the contract with Central Valley Lawnsapes for routine grounds maintenance at Agency properties across the County and City of Fresno. The Boards of Commissioners originally approved this contract at the December 15, 2015 meeting for an initial one-year term, with four (4) optional one-year extensions, for a total of five years. During the last contract term, Central Valley Lawnsapes agreed to provide service at four additional properties previously serviced by other companies (Pacific Gardens, Inyo Terrace, Laton Apartments, and Renaissance at Trinity). With the addition of these four properties, the contract amount was increased by \$31,380 from \$502,239 to \$533,619 per year. Staff is requesting permission from the Boards to exercise the third extension, for a one-year period effective January 1, 2019 and ending on December 31, 2019.

Fiscal Impact

The Agency would like to extend its contract with Central Valley Lawnsapes for an annual amount not to exceed \$533,619. This amount is included in the 2019 Operations and Mixed Finance Budgets.

Recommendation

It is recommended that the Boards of Commissioners authorize the CEO/Executive Director, or his designee, to execute the contract renewal with Central Valley Lawnsapes from January 1, 2019 to December 31, 2019 in the amount of \$533,619.

Background

In June 2015, the Agency published a Request for Proposals (RFP) to solicit proposals from qualified landscape maintenance contractors to perform routine groundskeeping, including mowing, trimming, and general cleaning, at Fresno Housing properties throughout the County and City of Fresno. In response, the Agency received proposals from four landscaping companies: Briner and Sons, Central Valley Lawnsapes, Fresno EOC, and J & H Landscape Gardening.

The RFP methodology considers both price and technical factors when evaluating a proposal. Proposers had the opportunity to bid on 42 separate pricing lots, with each lot receiving its own price evaluation to determine the best overall value at each location. In the case of this RFP, cost was the most heavily weighted factor, with consideration also being given to technical approach and capabilities, previous successful performance, and Section 3 Business Concern status. Based on this assessment and following the compilation of scores, the selection committee consisting of staff from Assisted Housing, Property Management, and Asset Management, recommended awarding a contract to the firm who scored highest in each lot or site. The Boards of Commissioners approved the initial grounds maintenance contracts on December 15, 2015, and subsequent renewals on December 20, 2016, and December 19, 2017. Staff is requesting that the Boards of Commissioners approve the third contract renewal, which would extend the contract from January 1, 2019 to December 31, 2019. Following this extension, there would be one extension period remaining.

RESOLUTION NO.____
BEFORE THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE CITY OF FRESNO

**RESOLUTION APPROVING CONTRACT RENEWAL FOR GROUNDS MAINTENANCE
SERVICES**

WHEREAS, the Housing Authority of the City of Fresno solicited proposals from qualified firms to provide grounds maintenance services; and

WHEREAS, Central Valley Lawscapes was a responsive and responsible firm who provided qualifications and prices that are most advantageous to the Housing Authority of the City of Fresno, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Housing Authority of the City of Fresno desires to renew the contracts with Central Valley Lawscapes for one year, beginning January 1, 2019, for an amount not to exceed \$533,619; and

WHEREAS, the term of said contracts will expire December 31, 2019, and will be renewable for up to one additional one-year term at the discretion of the Board of Commissioners, and pursuant to HUD procurement guidelines;

NOW THEREFORE, BE IT RESOLVED that Preston Prince, as CEO/Executive Director of the Housing Authority of the City of Fresno, or his designee, is hereby authorized to negotiate and execute on behalf of the Housing Authority of the City of Fresno the

aforementioned contracts and supporting documents with Central Valley Lawnscares,
for grounds maintenance services.

PASSED AND ADOPTED THIS 18th day of December, 2018. I, the undersigned, hereby
certify that the foregoing Resolution was duly adopted by the governing body with the following
vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Board of Commissioners

RESOLUTION NO.____
BEFORE THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF FRESNO COUNTY

**RESOLUTION APPROVING CONTRACT RENEWAL FOR GROUNDS MAINTENANCE
SERVICES**

WHEREAS, the Housing Authority of Fresno County solicited proposals from qualified firms to provide grounds maintenance services; and

WHEREAS, Central Valley Lawnsapes was a responsive and responsible firm who provided qualifications and prices that are most advantageous to the Housing Authority of Fresno County, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Housing Authority of Fresno County desires to renew the contracts with Central Valley Lawnsapes for one year, beginning January 1, 2019, for an amount not to exceed \$533,619; and

WHEREAS, the term of said contracts will expire December 31, 2019, and will be renewable for up to one additional one-year term at the discretion of the Board of Commissioners, and pursuant to HUD procurement guidelines;

NOW THEREFORE, BE IT RESOLVED that Preston Prince, as CEO/Executive Director of the Housing Authority of Fresno County, or his designee, is hereby authorized to negotiate and execute on behalf of the Housing Authority of Fresno County the aforementioned contracts and supporting documents with Central Valley Lawnsapes, for grounds maintenance services.

PASSED AND ADOPTED THIS 18th day of December, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Board of Commissioners

BOARD MEMO

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TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: Dec. 18, 2018

AGENDA ITEM: 6c

AUTHOR: Emily De La Guerra

SUBJECT: Consideration of the Investment Policy

Executive Summary

The purpose of this memo is to request approval from the Boards of Commissioners to adopt the Agency's Investment Policy. The purpose of the Investment Policy is to provide a clear understanding of the investment options available, as authorized by 24 CFR Part 85 Subpart C, the Annual Contribution Contract (ACC), the General Depository Agreement (FORM HUD-51999), HUD Notice 96-33 as extended by HUD Notice 02-13, and as authorized by California Government Code. The Boards of Commissioners may elect to further minimize investment risk by only authorizing specific investments found in the Investment Policy. The current Investment Policy elections represent a conservative investment strategy.

The Boards of Commissioners adopted the current Investment Policy on November 15, 2016. No changes have been made to this policy since last adopted. This policy is being brought to the Board of Commissioners for annual review and approval, as required by California Government Code Section 53601.

Fiscal Impact

There is no fiscal impact.

Recommendation

It is recommended that the Boards of Commissioners approve and adopt the Investment Policy as presented.

**BEFORE THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE CITY OF FRESNO**

RESOLUTION NO:

**RESOLUTION TO ADOPT THE INVESTMENT POLICY
HOUSING AUTHORITY OF THE CITY OF FRESNO**

WHEREAS, the Housing Authority of the City of Fresno adopted the current Investment Policy on November 15, 2016, and,

WHEREAS, the Investment Policy references “The specific requirements for the investment of HUD funds are found in 24 CFR Part 85 Subpart C, the Annual Contribution Contract (ACC), the General Depository Agreement (FORM HUD-51999) and HUD Notice 96-33 as extended by HUD Notice 02-13.” and,

WHEREAS, the Investment Policy has been brought before the Board for an annual review as required by the aforementioned regulations and California Government Code Section 53601,

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the City of Fresno adopt the Investment Policy as presented.

PASSED AND ADOPTED THIS 18th day of December 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Board of Commissioners

**BEFORE THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF FRESNO COUNTY**

RESOLUTION NO:

**RESOLUTION TO ADOPT THE INVESTMENT POLICY
HOUSING AUTHORITY OF FRESNO COUNTY**

WHEREAS, the Housing Authority of Fresno County adopted the current Investment Policy on November 15, 2016, and,

WHEREAS, the Investment Policy references “The specific requirements for the investment of HUD funds are found in 24 CFR Part 85 Subpart C, the Annual Contribution Contract (ACC), the General Depository Agreement (FORM HUD-51999) and HUD Notice 96-33 as extended by HUD Notice 02-13.” and,

WHEREAS, the Investment Policy has been brought before the Board for an annual review as required by the aforementioned regulations and California Government Code Section 53601,

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of Fresno County adopt the Investment Policy as presented.

PASSED AND ADOPTED THIS 18th day of December 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Board of Commissioners

INVESTMENT POLICY AND GUIDELINES

It is the purpose of this policy to establish procedures and guidelines for the investment of funds not needed for immediate day-to-day operations as they pertain to the Housing Authority of the City of Fresno and the Housing Authority of Fresno County (the "Agency"). This policy is intended to comply with the California Government Code Sections 53600-53609 and 53630-53686 as currently written. The specific requirements for the investment of HUD funds are found in 24 CFR Part 85 Subpart C, the Annual Contribution Contract (ACC), the General Depository Agreement (FORM HUD-51999) and HUD Notice 96-33 as extended by HUD Notice 02-13. It recognizes that Federal grant and loan programs may have specific requirements that are different from those set forth here. For situations where the California Government Code investment requirements differ from those of the Federal Government, the requirements that are more restrictive will be followed.

I. Investment Objectives

Section 53600.5 of the California Government Code outlines the primary objectives of a trustee investing public money. The primary objectives, in order of priority of the Agency investment activities shall be:

- A. **Safety:** Safety of principal is the foremost objective of this investment policy. Investments of the Agency shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- B. **Liquidity:** The investment portfolio will remain sufficiently liquid to enable the Agency to meet all operating requirements, which might be reasonably anticipated.
- C. **Return on Investment:** Investment return becomes a consideration only after the basic requirements for safety and liquidity have been met. The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles consistent with the investment policy of the Agency, taking into consideration investment risk constraints and cash flow characteristics of the portfolio.

II. Investment Securities and Diversification

- A. **Maximum Term of Investments:** No investment shall be made in any security that at the time of the investment has a term remaining to maturity in excess of five years.
- B. **Authorized and Suitable Investments:** The Agency is empowered by the HUD Notice 02-13 (See Attachment A to the HUD PIH Notice 96-33) to invest HUD funds in the following:

1. United States Treasury Bills, Notes & Bonds.
2. Obligations issued by Agencies or Instrumentalities of the U.S. Government.
3. Insured Demand and Savings Deposits, provided that deposits in excess of the insured amounts must be 100 percent collateralized by securities listed in A & B above.
4. Insured Money Market Deposit Accounts, provided that deposits in excess of the insured amount must be 100 percent collateralized by securities listed in A & B above.
5. Certificates of Deposits provided they are insured by an agency of the Federal Government. Deposits in excess of the insurance limit should be limited to terms of no longer than 30-90 days with amounts in excess of the limit 100% collateralized by U.S. Government securities.
6. Sweep Accounts that are 100 percent collateralized by securities listed in 1) & 2) above.
7. Any other investment security authorized under the provisions of HUD Notice PIH 02-13.

Investment Types <u>Authorized by HUD Notice PIH 02-13</u>	Authorized By Investment <u>Policy</u>	*Maximum *Maximum <u>Maturity</u>	*Maximum Percentage <u>Of Portfolio</u>	*Maximum Investment <u>In One Issuer</u>
Local Agency Bonds	No	Not Specified	None	None
U.S. Treasury Obligations	Yes	Not Specified	None	None
U.S. Agency Securities, Including GNMA				
Mortgage-Backed Securities	Yes	Not Specified	None	None
Securities of Gov-Sponsored Agencies	Yes	Not Specified	None	None
Demand & Savings Deposits	Yes	Not Specified	None	None
Money Market Deposit Accounts	Yes	N/A	None	None
Local Government Investment Pool (with a perfected security interest)	No	N/A	None	None
Super NOW Accounts	No	N/A	None	None
Certificates of Deposit	Yes	Not Specified	None	None
Certificates of Deposit (in excess of \$250,000)	Yes	90 days	None	None
Repurchase Agreements	No	Not Specified	None	None
Reverse Repurchase Agreements	No	Not Specified	None	None
Separate Trading of Registered Interest and Principal of Securities (STRIPS)	No	Not Specified	None	None
Mutual Funds	No	Not Specified	None	None

* Based on the requirements set forth in HUD Notice PIH 96-33 extended by Notice PIH 02-13 or investment policy requirements, whichever is more restrictive. For situations where Federal Government investment requirements differ from those of the California Government Code, the requirements that are more restrictive will be followed.

The Agency is empowered by California Government Code Sections 5922 and 53601 to invest non-HUD funds in the following:

1. Bonds issued by local government agencies with a maximum maturity of five years (See Attachment B to the HUD PIH Notice 96-33).
2. United States Treasury Bills, Notes & Bonds.
3. Registered warrants, treasury notes or bonds issued by the State of California.
4. Bonds, notes, warrants or other evidence of debt issued by a local agency within the State of California, including pooled investment accounts sponsored by the State of California, County Treasurer, other local agencies or Joint Powers Agencies.
5. Obligations issued by Agencies or Instrumentality of the U.S. Government.
6. Funds held under the terms of a Trust Indenture or other contract or agreement may be invested according to the provisions of those indentures or agreements.
7. Collateralized bank deposits with a perfected security interest in accordance with the Uniform Commercial Code (UCC) or applicable federal security regulations.
8. Any other investment security authorized under the provisions of Government Code 5922 and 53601.

Attachment A, HUD Approved Investment Instruments, and Attachment B, Government Code Section 53601, also provide a detailed summary of the limitations and special conditions that apply to each of the above listed investment securities. These attachments are included by reference in this investment policy.

Investment Types <u>Authorized by State Law</u>	Authorized By Investment <u>Policy</u>	*Maximum Maturity	*Maximum Percentage Of Portfolio	*Maximum Investment In One Issuer
Local Agency Bonds	Yes	5 years	None	None
U.S. Treasury Obligations	Yes	5 years	None	None
U.S. Agency Securities	Yes	5 years	None	None
Banker's Acceptances	No	180 days	40%	30%
Commercial Paper	No	270 days	25%	10%
Negotiable Certificates of Deposit	Yes	5 years	30%	None
Repurchase Agreements	No	1 year	None	None
Reverse Repurchase Agreements	No	92 days	20%	None
Medium-Term Notes	No	5 years	30%	None
Mutual Funds	No	N/A	20%	10%
Time Certificates of Deposit	Yes	5 years	30%	None
Money Market Mutual Funds	No	N/A	20%	10%
Mortgage Pass-Through Securities	No	5 years	20%	None
County Pooled Investment Funds	Yes	N/A	None	None
Local Agency Investment Fund	Yes	N/A	None	None
JPA Pools (other investment pools)	Yes	N/A	None	None

* Based on state law requirements or investment policy requirements, whichever is more restrictive. For situations where the California Government Code investment requirements differ from those of the Federal Government, the requirements that are more restrictive will be followed.

III. Prohibited Investments

Under the provisions of Government Code Section 53631.5, the Agency shall not invest any funds covered by this Investment Policy in inverse floaters, range notes, interest-only STRIPS derived from mortgage pools or any investment that may result in a zero interest accrual if held to maturity. In addition, the provisions of Government Code Section 53601 et. seq. applies.

IV. Collateralization

All certificates of deposits must be collateralized by U.S. Treasury Obligations. Collateral must be held by a third party and valued on a monthly basis. The percentage of collateralization on repurchase agreements will conform to the amount required under Government Code 53601(I)(2).

V. Safekeeping and Custody

All securities purchased or acquired shall be delivered to the Agency by book entry, physical delivery or by third party custodial agreement, including electronic delivery (Government Code 53601). A timely and complete confirmation and/or safekeeping receipt is required for each securities transaction. When a confirmation is accepted for book entry securities, such

confirmation must indicate the location if different from the bank or dealer issuing the confirmation. Book entry securities must be held in insured accounts.

VI. Diversification

It is the policy of the Agency to diversify its investment portfolio. The Agency will diversify its investments by security type and, within each type, by institution. To support the stated investment objectives, the portfolio must be constructed so as to minimize risk and maintain marketability. However, a portfolio consisting exclusively of LAIF and/or U.S. Treasury securities is acceptable. Assets shall be diversified to eliminate the risk of loss resulting from over concentration of assets in a specific maturity, a specific issuer or a specific class of securities. Diversification strategies shall be determined and revised periodically. In establishing specific diversification strategies, the following guidelines shall apply:

- A. The anticipated cash flow needs of the Agency should be considered when selecting investments. Portfolio maturities shall be matched against projected liabilities to avoid an over-concentration in a specific series of maturities.
- B. Maturities selected shall provide for stability and liquidity.
- C. Disbursement and payroll dates shall be covered by the scheduled maturity of specific investments, marketable U.S. Treasury Bills or notes or other cash equivalent instruments, such as money market mutual funds.

VII. Investment and Reporting Practices

Investment Authority: the investment authority will be vested in the Executive Director/CEO who may delegate such authority to duly capable personnel such as the Chief Administrative Officer, Chief Financial Officer, or Director of Finance.

Acceptable Dealers of Securities: Negotiable securities should be purchased or sold through a national bank; a California State chartered bank, or a brokerage firm having a national presence.

Exceptions to this policy may be approved by the Boards of Commissioners provided that the investment remains in compliance with the requirements of the Federal and/or State regulations as stated above.

The Investment Policy shall be reviewed and adopted by the Boards of Commissioners annually.

VIII. Supplementary Materials for Staff Review

- California Government Code Section 53601
- HUD Notice PIH 02-13
- HUD Notice PIH 96-33

BOARD MEMO

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www.fresnohousing.org

TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince



CEO

DATE: December 13, 2018

BOARD MEETING: Dec. 18, 2018

AGENDA ITEM: 6d

AUTHOR: Tiffany Mangum

SUBJECT: Consideration of the 2019 Agency Calendar

Executive Summary

The Boards of Commissioners, annually take action to approve the Agency's calendar. Thus, the attached calendar for 2019 indicates the agency recognized holidays, Friday closures, board meetings, and other important activities of the Agency.

Additional trainings and special meetings will be scheduled, and are subject to the availability of the Commissioners.

The following outlines the overall changes from the standard scheduling of agency closures, holidays or Board Meetings:

- Executive Committee Meetings will be held approximately 2 weeks (Wednesday) prior to the regular Board Meetings, with the exception of April, July, and October, where the meetings will be held on either Tuesday or Thursday to accommodate travel for the conferences.
- The Boards' Retreat will be held June 21st (Please save the date) and August 23rd

Recommendation

It is recommended the Boards of Commissioners review and approve the proposed 2019 Agency calendar.

Fiscal Impact

None.

2019 Agency Calendar

January 2019						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

February 2019						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

March 2019						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

April 2019						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May 2019						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June 2019						
Su	Mo	Tu	We	Th	Fr	Sa
						1
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

July 2019						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			







August 2019						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September 2019						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October 2019						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November 2019						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December 2019						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

 NAHRO National Events
  Board Meeting
  Executive Committee Mtg
  Holiday Observance
  Friday Office Closure
 Board Retreat

January 1st – New Year's Day

January 21st – Martin Luther King Jr. Day

February 11th – Lincoln's Birthday
(observed)

February 18th – Presidents' Day

April 1st – Caesar Chavez Day Observed

May 27th – Memorial Day

July 4th – Independence Day

September 2nd – Labor Day

November 11th – Veterans Day

November 28th – Thanksgiving Holiday

November 29th – Friday after Thanksgiving Holiday (8 hour Holiday Credit)

December 24th – Christmas Eve Observed – 4 hr work day

December 25th – Christmas Day

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TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 10, 2018

BOARD MEETING: December 18, 2018

AGENDA ITEM: 7a

AUTHOR: Angie Nguyen

SUBJECT: Resident Services Presentation: Fresno County Public Library

Executive Summary

Annika Janzen, Community Librarian with Fresno County Public Library (FCPL) will present information regarding the various literacy programs offered through the FCPL in partnership with the Fresno Housing Authority and Book Rich Environments (BRE). Additional information will be provided at the Boards of Commissioners meeting.

Recommendation

No action is necessary. This item is informational only.

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TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: Dec. 18, 2018

AGENDA ITEM: 7b

AUTHOR: Emily De La Guerra

SUBJECT: Update on the 2019 Budgets for Mixed Finance Properties

Executive Summary

The purpose of this memo is to update the Boards of Commissioners on the status of the 2019 Budgets for the Mixed Finance housing properties. Over the past several years, the Agency has sponsored 29 affordable housing projects throughout Fresno County that will be operational in 2019. We collectively call these groups of projects the “Mixed Finance Properties” because several (“mixed”) financing sources are used to acquire and construct the units.

As part of this “sponsorship” process, the Boards are first asked to approve the formation and creation of a limited partnership that will “own” the affordable housing development, and where Silvercrest, Inc. (a subsidiary of the Housing Authorities) is generally named as the Managing General Partner (MGP) of the partnership. The role of the Managing General Partner is to oversee the on-going operations of the partnership. This includes, amongst other things:

- Selecting the property management company
- Monitoring tenant and financial compliance, and
- Preparing reports, including the annual financial audit

Another one of the responsibilities of the MGP is to review and approve the annual operating budgets and financial performance for the partnerships. However, because the Fresno Housing Authority originally sponsored these projects and has a vested interest in the success of the properties, staff will be presenting the 2019 annual operating budgets to the Housing Authority Boards of Commissioners, and then asking the Silvercrest, Inc. Board of Directors to adopt the budgets.

Fiscal Impact

The fiscal impact of the Mixed Finance budgets would be as follows:

- Total net operating income for the 29 properties in operations for 2019 will be \$3.57 million.

- Total cash flow for 2019 will be \$1.65 million. This amount will become available for cash flow distributions in early 2020.

Recommendation

This item is informational only. No action is required. The Board of Directors for Silvercrest, Inc. will be asked to approve the 2019 Operating Budgets for the Mixed Finance properties.

Fresno Housing Authority
2019 Mixed Finance Budgets

Property Name	Yosemite Village	Parc Grove Northwest	Granada Commons	Parc Grove Commons II	Renaissance at Parc Grove	Renaissance at Trinity	Renaissance at Santa Clara	Renaissance at Alta Monte	Bridges at Florence	City View @ Van Ness	Mendota RAD	Orange Cove RAD	Fresno RAD	Viking Village RAD	Marion Villas	Pacific Gardens
# of Units	69	148	16	215	39	20	70	30	34	45	124	90	193	40	46	56
INCOME																
NET TENANT INCOME	622,659	1,384,109	134,359	1,879,200	348,471	183,024	567,519	244,633	211,630	315,025	1,138,757	792,995	1,621,411	312,534	290,860	344,782
TOTAL INTEREST INCOME	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL OTHER INCOME	1,116	7,200	-	8,400	-	30,000	54,886	30,000	-	36,575	-	-	-	-	45,623	-
TOTAL OTHER GRANT INCOME	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL INCOME	623,775	1,391,309	134,359	1,887,600	348,471	213,024	622,405	274,633	211,630	351,600	1,138,757	792,995	1,621,411	312,534	336,483	344,782
EXPENSES																
TOTAL PAYROLL EXPENSES	181,023	256,800	25,515	399,398	74,178	58,708	161,097	56,026	34,800	48,840	242,418	174,005	356,384	58,625	58,810	90,503
TOTAL ADMINISTRATIVE EXPENSES	107,707	112,700	28,018	184,780	65,275	40,867	80,926	44,609	40,440	65,780	176,347	132,963	258,810	73,352	47,232	70,455
TOTAL TENANT SERVICES EXPENSES	27,600	54,000	7,000	90,000	16,800	6,300	17,625	11,196	14,400	-	74,164	52,884	77,200	18,400	19,920	15,528
TOTAL UTILITY EXPENSES	94,191	165,849	12,920	166,986	56,037	35,283	90,130	47,406	32,900	48,320	176,611	79,785	183,356	29,937	54,333	45,336
TOTAL MAINTENANCE EXPENSES	161,217	243,440	36,972	517,940	54,663	41,386	209,173	81,730	45,740	59,475	180,939	125,395	304,622	53,839	30,977	64,749
TOTAL TAXES & INSURANCE EXPENSES	25,481	31,764	5,265	38,796	18,595	6,633	15,709	8,903	10,483	17,600	39,378	46,006	70,362	16,838	12,149	14,812
TOTAL EXPENSES	597,218	864,553	115,690	1,397,900	285,548	189,176	574,660	249,870	178,763	240,015	889,858	611,039	1,250,734	250,991	223,421	301,383
NET OPERATING INCOME	26,558	526,756	18,669	489,700	62,923	23,848	47,745	24,763	32,867	111,585	248,900	181,956	370,677	61,544	113,062	43,399
TOTAL NON-OPERATING EXPENSES	20,700	487,344	5,068	345,656	24,000	14,176	44,700	24,101	30,910	110,476	237,563	31,302	57,900	23,191	12,198	16,800
TOTAL NET INCOME	5,858	39,412	13,601	144,044	38,923	9,672	3,045	661	1,957	1,109	11,337	150,654	312,777	38,353	100,864	26,599

Fresno Housing Authority
2019 Mixed Finance Budgets

Property Name	Legacy Commons I	541 @ South Tower & Cedar Heights	Rio Villas	Paseo 55	Villa Del Mar	Kings River Commons	Cueva de Oso	Blossom Trail	Elderberry	Legacy Commons II	Fenix @ Calaveras & Fenix @ Glenn 30	Magill Terrace	Oak Grove	Total
# of Units	64	45	30	55	48	60	47	48	75	46		60	56	1899
INCOME														
NET TENANT INCOME	518,754	311,808	271,623	393,959	405,729	416,800	381,560	344,398	470,250	503,732	210,280	458,587	480,463	15,559,912
TOTAL INTEREST INCOME	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL OTHER INCOME	2,400	4,020	-	-	112,070	44,442	-	-	600	2,400	-	-	-	379,732
TOTAL OTHER GRANT INCOME	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL INCOME	521,154	315,828	271,623	393,959	517,799	461,242	381,560	344,398	470,850	506,132	210,280	458,587	480,463	15,939,644
EXPENSES														
TOTAL PAYROLL EXPENSES	71,153	74,736	50,275	61,405	90,228	75,384	57,155	55,709	56,400	146,833	40,000	70,774	68,623	3,195,805
TOTAL ADMINISTRATIVE EXPENSES	79,125	47,608	46,446	85,985	60,660	75,657	70,071	77,830	56,590	70,279	28,260	102,289	81,218	2,412,278
TOTAL TENANT SERVICES EXPENSES	25,596	18,504	12,500	21,600	18,000	21,000	30,000	18,804	2,400	25,596	13,200	24,000	22,400	756,617
TOTAL UTILITY EXPENSES	89,531	40,660	15,596	54,485	52,160	72,615	40,424	58,598	69,705	89,531	24,825	60,000	61,552	2,049,062
TOTAL MAINTENANCE EXPENSES	55,300	52,998	37,341	67,327	200,870	45,852	53,440	57,215	126,475	92,500	37,350	75,871	58,836	3,173,632
TOTAL TAXES & INSURANCE EXPENSES	21,052	31,062	24,597	17,038	14,487	61,763	93,950	30,000	20,181	19,500	14,200	21,239	33,663	781,505
TOTAL EXPENSES	341,757	265,568	186,755	307,840	436,405	352,271	345,040	298,156	331,751	444,239	157,835	354,173	326,291	12,368,899
NET OPERATING INCOME	179,397	50,260	84,868	86,119	81,394	108,971	36,520	46,242	139,099	61,893	52,445	104,413	154,172	3,570,745
TOTAL NON-OPERATING EXPENSES	78,171	13,500	30,951	16,500	9,515	108,095	14,400	14,400	84,952	19,200	9,000	18,000	16,800	1,919,568
TOTAL NET INCOME	101,226	36,760	53,917	69,619	71,879	876	22,120	31,842	54,147	42,693	43,445	86,413	137,372	1,651,177

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TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: December 18, 2018

AGENDA ITEM: 7c

AUTHOR: Christina Husbands

SUBJECT: Real Estate Development Update

Executive Summary

Staff will present an overview of current real estate activities.

Recommendation

None at this time. Informational only.

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TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 

CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: Dec. 18, 2018

AGENDA ITEM: 8a

AUTHOR: Tammy Townsend

SUBJECT: Consideration of the Agency's 2019-20 Strategic Goals

Executive Summary

The purpose of this memo is to update the Boards of Commissioners on the Agency's 2019-20 Strategic Board Goals, and ask the Boards to adopt the final draft of the Agency goals. Included in the Board packet is the final draft of the 2019-20 goals.

Initial discussions about future priorities and goal setting began at the Board Retreat in September. At the September Board meeting, time was spent brainstorming and sharing input on potential goals. During the October meeting of the Boards, a first draft of the goals was presented by staff and some initial work was done to discuss financial investments needed to accomplish goals. At the November meeting of the Boards, a more detailed and refined budget was presented.

At the December Board meeting, Commissioners will be asked to vote on both the 2019-20 Strategic Goals and the 2019 Agency Operations and HAP budgets. Adoption of both these items will allow staff and the Boards to move forward into 2019 with a detailed plan on how to achieve the goals and strategic priorities set by the Boards of Commissioners.

Recommendation

It is recommended that the Boards of Commissioners approve and adopt the 2019-20 Strategic Goals.

2019-20 Agency Goals and Strategic Plan Implementation

Create and sustain vibrant communities throughout Fresno County

Quality housing. Engaged residents. Vibrant communities.

Goal One – PLACE

Develop and expand the availability of quality affordable housing options throughout the city and county by growing and preserving appropriate residential assets and increasing housing opportunities for low-income residents.

1. Create a robust, balanced pipeline for development activities that appropriately responds to the needs of the low income residents of Fresno County. When evaluating development opportunities, factor the following Board priorities:
 - a. Mixed income and mixed use housing that promotes economically diverse neighborhoods and accommodates projected growth
 - b. A balance of new construction and renovation
 - c. Create community infrastructure, including community buildings, resource centers, and EnVision Centers if viable
 - d. Invest in existing and new neighborhoods
 - e. Rural communities, with limited economic catalysts
 - f. Prudent, financial transactions that promote long-term financial stability for the Agency; including, but not limited to utilizing innovative tools that could include tax credits, opportunity zones, and new avenues for state funding
 - g. Collaboration with CDC's, non-profits, faith-based and other neighborhood groups
 - h. Require thoughtful design that encourages healthy living for families
 - i. Promote the reduction of water and energy consumption at properties
2. Support efforts outlined in the Street 2 Home initiative. Specifically, seek solutions to expand low barrier crisis housing and permanent supportive housing options for homeless individuals
3. Consider how best to partner with the Southwest Fresno community regarding neighborhood development and investment

4. Collaborate with property owners, neighborhood groups, Community Development Corporations (CDCs), and other partners to enhance the quality of rental stock across the county and provide a greater range of options for residents with vouchers. Programs should focus on property owner outreach, support and education, in addition to targeting housing options in areas of opportunity.

Goal Two – PEOPLE

Respect community needs and knowledge - by listening, learning, and researching - and respond to issues compassionately, intelligently, and intentionally - by developing exceptional programs based on shared experiences.

1. Create and promote resident experiences that influence key outcomes around health, wage progression, and education. Share outcomes with the Boards and others on a quarterly basis to increase awareness of the positive impacts of quality housing.
2. Create opportunities to promote upward economic mobility and wage progression using data, policy updates and refined systems of support for residents. Develop a specific pilot program encompassing some of the following areas: resident mobility, wage progression/section 3, and home ownership.
3. Consider expanding engagement with residents by utilizing neighborhood conversation pilots to promote involvement and opportunities for resident leadership.
4. Reduce the number of homeless individuals in Fresno County through active leadership with partners to implement the four pillars outlined by Barbara Poppe in her work to create the Street 2 Home blueprint for Fresno County.
5. Establish policies and practices that reduce the likelihood of crime and promote resident safety.

Goal Three – PUBLIC

Build support for housing as a key component of vibrant, sustainable communities through public information, engagement, and advocacy that promotes high quality affordable housing and supports the advancement of Fresno's low-income residents.

1. Create ongoing conversations with city officials to seek opportunities to support economic development and facilitate a better understanding of Housing Authority benefits, priorities and opportunities
2. Enhance general understanding of the breadth and scope of the work of the Fresno Housing Authority through additional involvement and presence at community events
3. Conduct an annual community survey to evaluate trends and identify strategic opportunities. The first-year survey would establish a baseline and trends would be established over time.
4. Expand the current communication plan to highlight stories centered on residents services and economic success for neighborhoods and families
5. Utilize public platforms such as an updated website and social media to engage all stakeholders as well as inform and celebrate accomplishments through stories, events, and photos.

Goal Four – PARTNERSHIP

Collaborate to strengthen the Housing Authority's ability to address the challenges facing Fresno communities.

1. Monitor and track community events to expand engagement opportunities for the Housing Authority through various avenues, including participation with event booths if appropriate
2. Where possible, ensure any Memorandum of Understanding language with partners incorporates expectations about collecting and reporting outcomes for residents.
3. Engage the community and other key agencies in discussions to facilitate quality planning for the Southwest Fresno community.
4. Revisit relationship and collaboration opportunities with Fresno Housing affiliate Fresno Housing Education Corps (Ed Corps) to expand and promote positive educational outcomes for resident youth.
5. Work to develop additional partnerships that prioritize positive health outcomes for residents.

Management Goals – SUSTAINABILITY, STRUCTURE, STRATEGIC OUTREACH

1. Adopt multi-year, Agency-wide goals, that link to financial targets and annual budgets, to effectively drive performance and further the mission of the Agency. Involve a broad set of stakeholders in the budget and goal development process. Create processes and tools to regularly monitor and report on goal and budget progress.
2. Expand the use of meaningful data, analyses, and measurements that could be shared with the public and the Board and would allow for a greater understanding of the Agency's residents and programs.
3. Ensure strategies to attract, retain, and/or develop a leadership team that is diverse in background and experience, and representative of the Agency's values and the populations we serve.
4. Continue to explore options to mitigate the financial impacts to the Agency of rising healthcare and pension costs.
5. Seek opportunities to ensure consistent and quality information to the Boards including appropriate onboarding, periodic workshops, Boardroom enhancements, and other tools to facilitate informed and engaged Boards.

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TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: December 18, 2018

AGENDA ITEM: 8b

AUTHOR: Emily De La Guerra

SUBJECT: Consideration of the 2019 Operations and Housing Assistance
Payments Budgets

Executive Summary

The purpose of this memo is to provide information to the Boards of Commissioners regarding the Agency's 2019 annual budgets for Agency Operations and Housing Assistance Payments for the Housing Choice Voucher program, and to ask the Boards to approve said budgets. These budgets set forth the expected revenues and expenses for the Agency by program, department, and division. The attachment provided with this memo shows the consolidation of over 100 programmatic budgets combined into six Agency divisions. Each budget, separately and together as a whole, is intended to ensure that the Fresno Housing Authority remains fiscally sound while investing in the Agency's future, and delivering services in accordance with the mission statement and 2019-2020 Strategic Goals.

2019 Budget for Agency Operations

Over the years, there has been a continuous decline in federal funding for low-income housing programs. This disinvestment at the federal level means that the Agency must continue to diversify its revenue streams, create efficiencies in operations, and find creative ways to reduce expenses without causing detriment to our clients or our community. The goal of this budget is to provide a scenario to the Boards that continues to strengthen internal operations and make key investments in the our community, infrastructure, and human capital, while still facing uncertainty around funding levels for 2019.

The proposed budget for Agency Operations has revenues of \$45.9 million and operating and non-operating expenses totaling \$43.8 million, resulting in total net income of approximately \$2.1 million. Staff is requesting to draw \$1.1 million from unrestricted reserves in 2019 to continue the investment in several strategic priorities, including communications and community outreach, enhanced board tools, resident safety initiatives, the Street2Home initiative and program/data analysis. The budget also incorporates mobility, workforce development and high-income economic mobility initiatives to enhance outcomes for residents associated with Housing Choice Voucher (HCV) and public housing programs. While it is always the goal of the Agency to operate in a financially sustainable

manner and retain the Agency's unrestricted reserves, it is in the best interest of the Agency, our clients, and our community to continue current initiatives and establish new programs in 2019, despite funding uncertainty. As FY 2018 comes to a close, year-end projections for net income exceed the original budget and the Agency will add approximately \$2 million to unrestricted reserves, which will help fund the investment into new initiatives over the next year. Every effort was made during this budget process to operate more efficiently and effectively in the coming year. Ensuring long-term fiscal stability, preserving key assets and improving quality of life for residents continues to be the main goal of the Fresno Housing budget development process.

	Total 2019 Budget
NET TENANT INCOME	7,917,186
TOTAL INTEREST INCOME	1,721,000
TOTAL OTHER INCOME	3,717,841
TOTAL ADMIN & MANAGEMENT FEE INCOME	8,819,908
TOTAL DEVELOPER FEE INCOME	5,521,860
TOTAL HUD GRANT INCOME	16,401,571
TOTAL OTHER GRANT INCOME	1,764,311
TOTAL INCOME	45,863,676
TOTAL PAYROLL EXPENSES	18,968,005
TOTAL ADMINISTRATIVE EXPENSES	13,456,463
TOTAL TENANT SERVICES EXPENSES	3,276,257
TOTAL UTILITY EXPENSES	2,368,462
TOTAL MAINTENANCE EXPENSES	3,492,442
TOTAL TAXES & INSURANCE EXPENSES	552,822
TOTAL EXPENSES	42,114,451
NET OPERATING INCOME	3,749,225
TOTAL NON-OPERATING EXPENSES	1,693,553
NET INCOME	2,055,672
UNRESTRICTED NET INCOME	(1,124,696)

The highlights and assumptions for the 2019 Operations budget are as follows:

- The annual pro-ration for Administrative Fee Revenue is conservatively budgeted at 78% of eligibility for the HCV program. The 2018 Budget included a 75% proration, and the Agency is currently receiving 80% for FY 2018. Additionally, a 98% lease-up rate is budgeted for the HCV program in 2018, which further drives Administrative Fee revenue.
- Operating subsidy for the Public Housing program is budgeted at 93% of eligibility for FY 2019. The 2018 Budget included the same proration, and the Agency is currently receiving 93% for FY 2018.

- Developer Fees are budgeted at \$5.5 million for projects including Paseo 55, Legacy Commons I and II, Blossom Trail, and Renaissance at Parc Grove.
- The recommended budget projects 235 regular full-time employees for 2019. This is a slight increase from our 2018 budget of 234 employees.

Additional information regarding the 2019 Agency Operations Budget will be presented at the Board of Commissioners meeting.

2019 Budget for Housing Assistance Payments

Housing Assistance Payments (HAP) are the subsidies paid to landlords on behalf of the tenants participating in the HCV program (formerly known as “Section 8”). Expected revenues for 2019 are \$79.8 million and expenses of \$85.7 million, utilizing approximately \$5.9 million of restricted HAP reserves. These reserves are restricted by HUD, and can only be used to make HAP payments to landlords. Currently, the Agency has approximately \$8 million dollars in restricted HAP reserves, which would leave \$2.1 million remaining after 2019.

Program	Total HAP Revenue	Total HAP Expenses	Total HAP Reserve Usage
HCV	79,813,773	(85,732,289)	(5,918,516)

Fiscal Impact

The fiscal impact of adopting the Agency Operations and Housing Assistance Payments budgets would be as follows:

- Total net income to the Agency for 2019 of \$2.1 million.
- Utilization of unrestricted reserves of \$1.1 million.
- Decrease of restricted net assets in the HCV program by \$5.9 million.

Recommendation

It is recommended that the Boards of Commissioners of the Fresno Housing Authority adopt the 2019 budget for Agency Operations, and the 2019 budget for Housing Assistance Payments.

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF THE CITY OF FRESNO

**RESOLUTION ADOPTING THE 2019 HOUSING AUTHORITY'S ANNUAL OPERATING
BUDGET AND THE 2019 HOUSING ASSISTANCE PAYMENTS BUDGET**

WHEREAS, the Annual Operating Budget and the Housing Assistance Payments Budget for the Fresno Housing Authority for the fiscal year beginning January 1, 2019 and ending December 31, 2019 has been presented for adoption before the Board of Commissioners of the Housing Authority of the City of Fresno at its open public meeting on December 18, 2018; and

WHEREAS, the Annual Operating Budget as presented for adoption reflects total revenues of \$45,863,676 and total expenses of \$42,114,451; and

WHEREAS, the Housing Assistance Payments Budget as presented for adoption reflects total revenues of \$79,813,773 and total expenses of \$85,732,289; and

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the City of Fresno adopt the Annual Operating Budget and the Housing Assistance Payments Budget beginning on January 1, 2019 and ending on December 31, 2019.

PASSED AND ADOPTED THIS 18th day of December 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Preston Prince, Secretary of the Boards of Commissioners

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF FRESNO COUNTY

**RESOLUTION ADOPTING THE 2019 HOUSING AUTHORITY'S ANNUAL OPERATING
BUDGET AND THE 2019 HOUSING ASSISTANCE PAYMENTS BUDGET**

WHEREAS, the Annual Operating Budget and the Housing Assistance Payments Budget for the Fresno Housing Authority for the fiscal year beginning January 1, 2019 and ending December 31, 2019 has been presented for adoption before the Board of Commissioners of the Housing Authority of Fresno County at its open public meeting on December 18, 2018; and

WHEREAS, the Annual Operating Budget as presented for adoption reflects total revenues of \$45,863,676 and total expenses of \$42,114,451; and

WHEREAS, the Housing Assistance Payments Budget as presented for adoption reflects total revenues of \$79,813,773 and total expenses of \$85,732,289; and

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of Fresno County adopt the Annual Operating Budget and the Housing Assistance Payments Budget beginning on January 1, 2019 and ending on December 31, 2019.

PASSED AND ADOPTED THIS 18th day of December 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Preston Prince, Secretary of the Boards of Commissioners

Fresno Housing Authority
Operating Budget

	Total 2018 Budget							Total 2019 Budget							2019 to 2018 Variance	
	Core	Instrumentalities	Planning & Development	Assisted Housing	Housing Management	Unrestricted Properties	Total 2018 Budget	Core	Instrumentalities	Planning & Development	Assisted Housing	Housing Management	UP	Total 2019 Budget	\$ Variance	%Variance
NET TENANT INCOME	-	-	-	-	5,935,766	2,300,350	8,236,116	-	-	-	-	5,366,476	2,550,710	7,917,186	(318,930)	-4%
TOTAL INTEREST INCOME	7,000	866,667	-	-	17	-	873,684	8,000	1,713,000	-	-	-	-	1,721,000	847,316	91%
TOTAL OTHER INCOME	808,000	177,299	20,000	710,822	14,014	43,000	1,773,135	974,000	1,350,000	170,000	1,157,705	25,996	712,302	4,390,003	2,616,868	106%
TOTAL ADMIN & MANAGEMENT FEE INCOME	8,441,439	300,000	-	-	-	-	8,741,439	8,739,908	80,000	-	-	-	-	8,819,908	78,469	1%
TOTAL DEVELOPER FEE INCOME	-	-	4,979,660	-	-	-	4,979,660	-	-	5,521,860	-	-	-	5,521,860	542,200	10%
TOTAL HUD GRANT INCOME	-	-	-	9,491,065	4,916,293	-	14,407,358	-	-	-	12,118,911	4,282,660	-	16,401,571	1,994,213	14%
TOTAL OTHER GRANT INCOME	-	-	-	1,354,390	1,000,338	36,420	2,391,148	-	-	-	514,532	555,418	22,199	1,092,149	(1,298,999)	-42%
TOTAL INCOME	9,256,439	1,343,966	4,999,660	11,556,277	11,866,428	2,379,770	41,402,540	9,721,908	3,143,000	5,691,860	13,791,148	10,230,550	3,285,211	45,863,676	4,461,136	11%
TOTAL PAYROLL EXPENSES	7,135,977	-	1,285,953	6,891,221	3,026,970	330,528	18,670,649	7,023,013	-	1,450,179	7,584,893	2,422,006	487,913	18,968,005	297,356	2%
TOTAL ADMINISTRATIVE EXPENSES	3,445,759	237,825	1,583,998	4,741,805	2,169,865	213,403	12,392,655	3,418,339	382,150	1,645,312	5,802,611	1,875,579	332,471	13,456,463	1,063,808	8%
TOTAL TENANT SERVICES EXPENSES	50,000	-	-	899,843	335,581	5,250	1,290,674	51,000	-	5,000	2,967,050	246,757	6,450	3,276,257	1,985,583	112%
TOTAL UTILITY EXPENSES	173,427	-	-	-	1,882,686	270,410	2,326,523	172,144	-	-	-	1,737,628	458,690	2,368,462	41,939	2%
TOTAL MAINTENANCE EXPENSES	404,862	25,000	3,000	44,354	1,922,431	351,490	2,751,137	474,662	-	9,000	92,899	2,024,446	891,434	3,492,442	741,305	28%
TOTAL TAXES & INSURANCE EXPENSES	23,720	8,900	1,000	7,900	460,962	40,101	542,583	44,300	8,900	6,600	7,451	419,546	66,025	552,822	10,239	2%
TOTAL EXPENSES	11,233,745	271,725	2,873,951	12,585,123	9,798,495	1,211,182	37,974,221	11,183,459	391,050	3,116,092	16,454,904	8,725,963	2,242,984	42,114,451	4,140,230	11%
NET OPERATING INCOME	(1,977,306)	1,072,241	2,125,709	(1,028,846)	2,067,933	1,168,588	3,428,319	(1,461,551)	2,751,950	2,575,768	(2,663,756)	1,504,587	1,042,227	3,749,225	320,906	8%
TOTAL NON-OPERATING EXPENSES	-	500	-	120,000	1,226,954	609,633	1,957,087	-	-	-	-	1,076,169	617,384	1,693,553	(263,534)	-15%
NET INCOME	(1,977,306)	1,071,741	2,125,709	(1,148,846)	840,979	558,955	1,471,232	(1,461,551)	2,751,950	2,575,768	(2,663,756)	428,417	424,843	2,055,672	584,440	29%
UNRESTRICTED NET INCOME	(1,977,306)	-	2,125,709	(1,148,846)	-	558,955	(441,488)	(1,461,551)	-	2,575,768	(2,663,756)	-	424,843	(1,124,696)	(683,208)	212%

BOARD MEMO

O (559) 443-8400

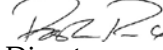
F (559) 445-8981

1331 Fulton Mall
Fresno, California 93721
TTY (800) 735-2929

www.fresnohousing.org

TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: December 18, 2018

AGENDA ITEM: 8c

AUTHOR: Emily De La Guerra

SUBJECT: Consideration of Contract for General Legal Services

Executive Summary

The purpose of this memo is to request approval from the Boards of Commissioners to enter into a contract with Baker, Manock and Jensen PC for General Legal Services. The term of this contract is January 1, 2019 to December 31, 2019, with the option to renew the contract for four (4) additional, one-year terms for a total potential contract period of five years.

Fiscal Impact

Based on an independent cost estimate and the projected needs of the organization, the contract with Baker, Manock, and Jensen PC includes an annual amount not to exceed \$300,000. The 2019 Agency Operations and Mixed Finance Budgets includes funding for this contract.

Recommendation

It is recommended that the Boards of Commissioners authorize the CEO/Executive Director to negotiate and execute the contract with Baker, Manock, and Jensen PC, for a term of January 1, 2019 to December 31, 2019 and an amount not to exceed \$300,000.

Background Information

In June 2018, the Agency published a Request for Proposals (RFP) to solicit for a variety of legal services. As a result of the RFP, the Agency received proposals from nine legal firms (both local and national) for General Legal Services. After proposals were evaluated by a team of Agency staff from a variety of departments, members of the Boards of Commissioners and the Agency's Executive staff conducted interviews with the three firms determined to be in a competitive scoring range. Final scoring was completed after the interview process and Baker, Manock, and Jensen PC was determined to be the highest scoring proposer based on the published evaluation factors. As such, the Agency is requesting approval from the Boards of Commissioners to enter into a contract with Baker, Manock, and Jensen PC for General Legal Services.

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF THE CITY OF FRESNO

RESOLUTION APPROVING THE CONTRACT FOR GENERAL LEGAL SERVICES

WHEREAS, the Housing Authority of the City of Fresno (the "Agency") has solicited proposals from qualified law firms relating to general legal services; and

WHEREAS, Baker, Manock, & Jensen PC was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with Baker, Manock, & Jensen PC for general legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$300,000; and

WHEREAS, the term of said contracts will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the City of Fresno do hereby authorize Preston Prince, Executive Director/CEO, or his designee, to negotiate the contract for general legal services with Baker, Manock, & Jensen PC and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF THE COUNTY OF FRESNO

RESOLUTION APPROVING THE CONTRACT FOR GENERAL LEGAL SERVICES

WHEREAS, the Housing Authority of Fresno County (the "Agency") has solicited proposals from qualified law firms relating to general legal services; and

WHEREAS, Baker, Manock, & Jensen PC was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with Baker, Manock, & Jensen PC for general legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$300,000; and

WHEREAS, the term of said contracts will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the Fresno County do hereby authorize Preston Prince, Executive Director/CEO, or his designee, to negotiate the contract for general legal services with Baker, Manock, & Jensen PC and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

INTRODUCTION

This contract by and between the Fresno Housing Authority (hereinafter “the Agency”), and **Baker Manock & Jensen, PC**, a California professional corporation (hereinafter “the Contractor”) is hereby entered into this **day of January, 2019**.

Services pursuant to this contract shall begin on **the 1st day of January, 2019, and shall end on the 31st day of December, 2019**, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to “days” shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day). Also, whenever the term “herein” is referred to, such refers to this contract form, the appendices and all listed attachments.

1.0 Definitions.

- 1.1 **Fresno Housing Authority (“the Agency”).** Any reference herein or within any Appendix to the “Fresno Housing Authority” shall be interpreted to mean the same as the Agency.
- 1.2 **Contracting Officer (CO).** The Agency’s Contracting Officer, typically the Executive Director, but may be another person delegated such authority by the ED.
- 1.3 **Executive Director (ED).** The Agency’s Executive Director/Chief Executive Officer.
- 1.4 **Request For Proposals (RFP).** A competitive solicitation process conducted by the Agency wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment.

- 2.1 **Scope of Services.** The services provided pursuant to this contract generally consist of those services for the Agency as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the Agency at the designated Agency facilities. In addition, the Agency shall retain the right to implement and/or enforce any item issued as a part of RFP No. P18001.

2.2 Use of Services. The Agency shall use the Contractor as the primary source for general counsel legal services as described herein and within the Appendices. The Agency reserves the right to use other or additional contractors for general counsel legal services when a conflict prevents the Contractor from performing the service or for any reason determined by the Agency.

2.3 Cost/Value of Services.

2.3.1 Contract Value. The Not-To-Exceed (NTE) value of this contract's first term (1/1/19 – 12/31/19) is:

\$300,000.00

The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order.

2.3 Renewal Options. This contract is initially executed for the period of one (1) year with the option, at the Agency's discretion, of four (4) additional one-year option periods, for a maximum total of five (5) years. The contract value of each one-year option will be determined by the Agency at the beginning of each term, based on that year's anticipated needs.

2.4 Time Performance. The Contractor will complete each assigned task as assigned by the Agency.

2.5 Billing Method.

2.6.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:

**Fresno Housing Authority
Attention: Tiffany Mangum
1331 Fulton Street, Fresno, California 93721**

2.6.2 At a minimum, the invoice shall detail the following information:

2.6.2.1 Unique invoice number;

2.6.2.2 Contractor's name, address and telephone number;

2.6.2.3 Date of invoice and/or billing period;

2.6.2.4 Applicable Contract No. (C18022);

2.6.2.5 Applicable Purchase Order No. Issued by the Agency (If applicable);

2.6.2.6 Brief description of services rendered, including applicable time frame, total hours being billed for each service, and at the approved rate (may be submitted in the form of a report);

2.6.2.7 Task Order (if applicable), approved by the Agency's Executive Director or authorized representative; and

2.6.2.8 Total dollar amount being billed.

2.6.3 The Agency will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

3.0 Agency's Obligations. Pursuant to this contract, the Agency agrees to provide the specific services detailed herein and also shall be responsible for the following:

3.1 The Agency agrees to not provide to the Contractor any Task Order assigning work to the Contractor without the prior written approval of an authorized Agency representative.

4.0 Contractor's Obligations. Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

- 4.1 Supervision and Oversight.** The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the Agency pursuant to this contract.
- 4.2 Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor's normal conduct of business.
- 4.3 Compliance with Federal and State Laws:** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 4.4 Confidentiality.** The Contractor, in connection with performing services hereunder, will have access to or may be provided certain confidential information concerning the Agency and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Agency or any other information which a reasonable person could conclude that should remain confidential (collectively Confidential Information), will not be disclosed to any party and without limitation, any employee of the Agency or any client or potential client of the Agency at any time, except for the Contractor's legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Contractor acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Contractor further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Agency. The Agency will have the right to enforce this Contract by specific performance, as well as hold the Contractor liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent. The Contractor agrees that it has received valuable consideration for the entering into of this Contract and agrees to be bound all of its terms and conditions. This Contract will be binding on the Contractor and any attorney, accountant, financial advisor who also may be provided Confidential Information.

4.5 Insurance Requirements.

4.5.1 Insurances. In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

4.5.1.1 General Liability Insurance. Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to premises and fire damage of \$50,000 and medical expenses for any one person of \$5,000 with a deductible not greater than \$1,000. The Agency shall be named upon the certificate issued as an "additional insured," together with providing a copy of the corresponding endorsement evidencing the same.

4.5.1.2 Professional Liability Insurance. Policy of Professional Liability Insurance or Errors & Omissions coverage, minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000 with a deductible of not greater than \$1,000;

4.5.1.3 Automobile Liability Insurance. Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000.

4.5.1.4 Worker's Compensation Insurance. Worker's compensation coverage evidencing carrier and coverage amount.

4.5.1.5 Certificates and Endorsements. The Contractor shall provide to the Agency with current certificate(s) and endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) and endorsement(s) shall be delivered to the following person representing the Agency:

Fresno Housing Authority

Attn: Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721

- 4.5 Licensing.** The Contractor shall also provide to the Agency a copy of the required local Business Tax License. Failure to maintain this license in a current status during the term(s) of this contract shall constitute a material breach thereof.
- 4.6 Financial Viability and Regulatory Compliance.**
- 4.6.1** The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.
- 4.6.2** The Contractor agrees to promptly disclose to the Agency any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the Agency in writing within five (5) days of such notification received will constitute a material breach of this contract.
- 4.6.3** The Contractor further agrees to promptly disclose to the Agency any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this contract.
- 4.6.4** All disclosures made pursuant to this section of the contract shall be made in writing and submitted to the Agency within the time periods required herein.

5.0 Modification. This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties.

6.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

7.0 Applicable Laws.

7.1 Compliance with Federal and State Laws. All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

7.2 Jurisdiction of Law. The laws of the State of California shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Fresno County, California is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

8.0 Notices and Reports.

8.1 All notices and/or reports submitted to the Agency by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the Agency:

**Fresno Housing Authority
Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721**

8.2 All notices submitted to the Contractor pursuant to this contract shall be in writing and mailed to the attention of:

**Baker Manock & Jensen, PC
Attn: Kenneth J. Price
5260 North Palm Avenue, Suite 421, Fresno, Ca 93740**

9.0 Disputed Billings (Charges).

9.1 Procedures: In addition to the procedures detailed within Clause No. 7 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

9.1.1 The Agency's representative shall, within ten (10) days after the Agency's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.

9.1.2 If such dispute cannot be resolved by the contractor's response, within ten (10) days after such notification is given, the CO and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.

9.1.3 If the CO and the contractor's representative are unable to resolve the dispute through such discussion within ten (10) days, the Agency shall, within ten (10) days thereafter, either:

9.1.3.1 Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of California;

9.1.3.2 Not pay the disputed charge and submit the matter to the appropriate district court in the State of California;

9.1.3.3 Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of California.

9.1.4 The decision from arbitration will be binding upon both parties. If the decision is adverse to the Agency, the Agency shall pay the Agency's receipt of the decision. If the decision is in favor of the Agency, the contractor will either:

9.1.4.1 Clear the amount which is ordered from the Agency account; or

9.1.4.2 Repay to the Agency the amount ordered;

Either option shall be completed within ten (10) days after the contractor's receipt of the arbitrator's decision.

10.0 Binding Arbitration/Dispute Resolution. Any and all (material and non-material) disputes or controversies between the parties hereto involving either: (1) the construction or application of any of the terms, covenants or conditions of this Agreement or (2) otherwise arising in any respect with regard to this Agreement, or (3) relating to, arising out of, or resulting from either this Agreement, the performance of this Agreement, or the lack of performance of this Agreement, and/or (4) in any other manner relating to or involving this Agreement, shall not be litigated in any federal or state court or before any state, federal or administrative agency, but rather shall upon written request of one party served on the other be submitted and shall be solely and exclusively resolved by "final and binding" arbitration before a neutral retired Judge, which arbitration shall comply with and be governed by the provisions of the California Arbitration Act (CCP §§1280, et seq.) This Arbitration Agreement constitutes a waiver of any right to a jury trial; and it also waives any right to proceed before any federal or state court or any federal or state administrative agency with regard to the disputes resolution. Said waivers are agreed to because the parties hereto prefer neutral and binding arbitration over any other means of dispute resolution. The neutral (retired Judge) arbitrator shall be mutually agreed upon by the parties; if such an Agreement is not promptly forthcoming, then the retired Judge to serve as arbitrator shall be selected by the Superior Court in accordance with the California Arbitration Act. The Arbitration hearing shall be conducted before a Certified Court Reporter and shall take place in the County of Fresno unless otherwise agreed by both parties. The hearing before the arbitrator of the matters to be arbitrated shall be at a time and place within the County of Fresno as selected by the Arbitrator. The Arbitrator shall select such time and place promptly after his/her appointment, and the arbitrator shall give written notice thereof to each party at least thirty days prior to the date so fixed. The arbitrator shall follow California substantive and procedural law; except only at the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings (in the sole discretion of the arbitrator) need not govern, so that evidence may be admitted or excluded in the discretion of the arbitrator as long as it is trustworthy. The arbitrator shall hear and determine the matter and shall execute and acknowledge the award in writing explaining the basis for his/her ruling. The Arbitrator shall cause a copy of the award to be delivered to each of the parties within twenty (20) calendar days after the conclusion of the evidentiary hearing, unless otherwise agreed by the parties. Said award shall follow California substantive and

procedural law. All the arbitrators' fees and all of the certified court reporter's fees (for daily attendance and for providing the arbitrator with the original transcript) shall be shared equally (50/50) by the parties; and all the parties shall bear their own legal fees and their own litigation costs and expenses.

- 10.1 Breach.** Notwithstanding the foregoing, it is hereby agreed and understood that, in the event that if a party to this Agreement breaches or threatens to breach this Agreement, then the other party to the Agreement may seek and obtain an injunction and/or any other equitable relief necessary from a state or federal court of competent jurisdiction, so as to order the continuance of the party's performance under this Agreement, pending the results of the aforementioned arbitration proceeding.
- 10.2 Mediation.** Further, notwithstanding the foregoing, it is agreed that prior to appearing before and conducting the aforementioned binding arbitration hearing, the parties shall engage in a fully privileged and confidential Mediation before a neutral retired Judge. The Mediator retired Judge shall be a different person from the arbitrator retired Judge unless the parties stipulate otherwise. The Mediator shall be mutually selected by the parties; however, if they are unable to agree, then the Mediator shall be selected by the arbitrator. The Mediator's fees and costs shall be shared equally by the parties. Communications during the Mediation process shall remain confidential and barred from introduction into evidence at the arbitration pursuant to the provisions of California Evidence Code §§ 1152 and 1119 and Fed. Rules of Evidence, Rule 408.
- 10.3 Petition to Compel Arbitration, and/or Petition To Enforce The Arbitrator's Award.** Notwithstanding anything herein to the contrary, if either party to this Agreement brings any court action or proceeding to either compel arbitration or to enforce an arbitration award, then the prevailing party shall be entitled to recover reasonable attorneys' fees as well as costs and expenses. The arbitration process itself is not an action or proceeding for purposes of this Agreement.
- 11.0 24 CFR 85.36(i), Procurement.** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the Agency and the Contractor each agree to comply with the following provisions:
- 11.1 Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this

contract the Agency or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within ten (10) days, respond in writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

- 11.1.1** If the contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.
- 11.1.2** Prior to termination, the Agency may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.3** After termination, if the contractor does not agree with the Agency's justification for the termination, the contractor shall have ten (10) days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail

all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).

11.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

11.2 Termination For Cause and Convenience. Notwithstanding any other provision of this Contract, the parties agree that the Agency may terminate this agreement at any time, in its sole and absolute discretion, by delivering written notice to the Contractor. In such event, Contractor shall only be paid for the services actually performed to the date of such written notice.

11.3 Reporting. Both parties hereby agree to comply with any reporting requirements that may be detailed herein.

11.4 Patent Rights. Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.

11.5 Copy Rights/Rights in Data. In addition to the requirements contained within Clause No. 5 of *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the Agency has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:

11.5.1 Except as provided elsewhere in this clause, the Agency shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.

- 11.5.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.
- 11.5.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the Agency and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the Agency.
- 11.5.4** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the Agency a license of the same scope as identified in the preceding paragraph.
- 11.5.5** The Agency agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Agency may either return the data to the contractor, or cancel or ignore the markings.
- 11.5.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 11.5.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any

restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the Agency shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

11.5.8 The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the Agency except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any Agency location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

11.6 Access to Records. Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11.7 Record Retention. Both parties hereby guarantee retention of all required records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.

11.8 Energy Policy and Conservation Act. Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- 11.9 Executive Order 11246.** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 11.10 Copeland "Anti-Kickback" Act.** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 11.11 Davis-Bacon-Act.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.12 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.13 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12.0 Additional Considerations.

- 12.1 Non-Escalation.** Unless otherwise specified within the contract documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 12.2 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:

12.2.1 Funding is not available;

12.2.2 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

12.2.3 The Agency's requirements in good faith change after award of the contract.

12.3 Local, State, and/or Federal Permits. Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the Agency or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor, and any costs required by the Contractor to procure and provide such necessary permits.

12.4 Government Standards. It is the responsibility of the proposer to ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Fresno Pollution Regulations) and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

12.5 Freight on Bill and Delivery. All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the locations(s) specified within the RFP documents or within the contract.

12.5.1 The Contractor agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

12.6 Backorders.

12.6.1 The CO must be notified in writing by the contractor within 10 days of any and all backordered materials and/or any incomplete services; and the estimated delivery date.

- 12.6.2** Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon delivery date, may at the option of the Agency, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the Agency to do so.
- 12.7 Work on Agency Property.** If the Contractor's work under the contract involves operations by the Contractor on Agency premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.
- 12.8 Official, Agent and Employees of the Agency Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 12.9 Subcontractors.** Unless otherwise stated within the contract documents, the Contractor may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 12.10 Salaries and Expenses Relating to the Contractors Employees.** Unless otherwise stated within the RFP documents, the Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 12.11 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.

12.12 Severability. If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.

12.13 Waiver of Breach. A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

12.14 Time of the Essence. Time is of the essence under this agreement as to each provision in which time of performance is a factor.

12.15 Limitation of Liability. In no event shall the Agency be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

12.16 Indemnification.

12.16.1 The Contractor shall indemnify, defend, and hold the Agency (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arising out of, or occurring due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this Contract, (3) comply with the "California Industrial Insurance Act," or any other similar law, ordinance, or decree; or (4) ensure that the any subcontractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the Agency against any loss or damage which was specifically caused by the Agency providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.

12.16.2 In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the Agency, its officers, employees, and agents, against any and all claims, suits or actions which may be brought

against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the Agency. If the Contractor shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the Contractor including attorney's fees and court costs.

12.16.3 Any money due to the Contractor under and by virtue of this contract, which the Agency believes must be withheld from the Contractor to protect the Agency, may be retained by the Agency so long as it is reasonably necessary to ensure the Agency's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the Agency provided, however, neither the Contractor's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the Agency from any potential claims.

12.16.4 The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

12.0 Lobbying Certification. By execution of this contract with the Agency the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

12.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee

of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in an accordance with its instructions.

- 12.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 12.4 Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives, where applicable:
- 12.4.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 12.4.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 12.4.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.4.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.

12.4.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).

12.4.6 HUD Information Bulletin 909-23 which is the following:

12.4.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;

12.4.6.2 Clean Air and Water Certification; and,

12.4.6.3 Energy Policy and Conservation Act.

12.4.7 That the funds that are provided by the Agency and HUD hereunder shall not be used, directly or indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or ineligible Contractor.

12.4.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.

12.4.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

13.0 Section 3 Clause. As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are hereby included as a part of this contract.

13.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment

and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- 13.2** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 13.3** The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 13.4** The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 13.5** The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- 13.6** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

- 13.7 With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14.0 Appendices.

- 14.1 The following noted documents are placed under each of the noted appendix and are a part of this contract:

14.1.1 **Appendix No. 1.** form HUD-5370-C (10/2006), *General Condition for Non-Construction Contracts, Section I—(With or without Maintenance Work)*;

14.1.2 **Appendix No. 2.** Scope of Services, as covered in RFP P18001;

14.1.3 **Appendix No. 3.** The proposed fee(s) submitted by this contractor in response to the RFP, or any negotiated fee(s) that resulted thereto, which fee(s) shall apply to each procurement that ensues from this contract.

14.1.5 **Inclusion by Reference.** Included by reference is any document or clause issued as a part of RFP No. P18001 that the Agency may choose to include at any time during the performance of this contract or any options exercised thereto by the Agency. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from the Agency upon written request for such from the contractor.

- 14.2 **Order of Precedence.** Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within the body of this contract shall take first precedence, then the requirement(s) detailed within each appendix shall take precedence in the order that they are

listed above (meaning, the requirement(s) detailed within the lower listed item may not overrule any requirement(s) detailed within a higher listed item).

- 14.0 CERTIFICATIONS.** The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

Baker Manock & Jensen, PC:

By: _____ Date: _____

Kenneth J. Price, Managing Shareholder

Fresno Housing Authority:

By: _____ Date: _____

Preston Prince, CEO/Executive Director

BOARD MEMO

O (559) 443-8400

F (559) 445-8981

1331 Fulton Mall
Fresno, California 93721
TTY (800) 735-2929

www.fresnohousing.org

TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: December 18, 2018

AGENDA ITEM: 8d

AUTHOR: Emily De La Guerra

SUBJECT: Consideration of Contract for Human Resources Legal Services

Executive Summary

The purpose of this memo is to request approval from the Boards of Commissioner's to enter into a contract with Atkinson, Anderson, Loya, Ruud, & Romo ("AALRR") for Human Resources Legal Services. The term of this contract is January 1, 2019 to December 31, 2019, with the option to renew the contract for four (4) additional, one-year terms for a total potential contract period of five years.

Fiscal Impact

Based on an independent cost estimate and the projected needs of the organization, the contract with AALRR includes an annual amount not to exceed \$150,000. The 2019 Agency Operations and Mixed Finance Budgets includes funding for this contract.

Recommendation

It is recommended that the Boards of Commissioners authorize the CEO/Executive Director to negotiate and execute the contract with AALRR for a term of January 1, 2019 to December 31, 2019 and an amount not to exceed \$150,000.

Background Information

In June 2018, the Agency published a Request for Proposals (RFP) to solicit for a variety of legal services. As a result of the RFP, the Agency received proposals from ten legal firms (both local and national) for Human Resources Legal Services. After proposals were evaluated by a team of Agency staff from a variety of departments, members of the Boards of Commissioners and the Agency's Executive staff conducted interviews with the three firms determined to be in a competitive scoring range. Final scoring was completed after the interview process and AALRR was determined to be the highest scoring proposer based on the published evaluation factors. As such, the Agency is requesting approval from the Boards of Commissioners to enter into a contract with AALRR for Human Resources Legal Services.

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF THE CITY OF FRESNO

RESOLUTION APPROVING THE CONTRACT FOR HUMAN RESOURCES LEGAL SERVICES

WHEREAS, the Housing Authority of the City of Fresno (the "Agency") has solicited proposals from qualified law firms relating to human resources legal services; and

WHEREAS, Atkinson, Anderson, Loya, Ruud, & Romo ("AALRR") was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with AALRR for human resources legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$150,000; and

WHEREAS, the term of said contract will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the City of Fresno do hereby authorize the Executive Director/CEO, or his designee, to negotiate the contract for human resources legal services with AALRR and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF FRESNO COUNTY

RESOLUTION APPROVING THE CONTRACT FOR HUMAN RESOURCES LEGAL SERVICES

WHEREAS, the Housing Authority of Fresno County (the "Agency") has solicited proposals from qualified law firms relating to human resources legal services; and

WHEREAS, Atkinson, Anderson, Loya, Ruud, & Romo ("AALRR") was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with AALRR for human resources legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$150,000; and

WHEREAS, the term of said contract will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of Fresno County do hereby authorize the Executive Director/CEO, or his designee, to negotiate the contract for human resources legal services with AALRR and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

INTRODUCTION

This contract by and between the Fresno Housing Authority (hereinafter “the Agency”), and **Atkinson, Andelson, Loya, Ruud, & Romo, PC**, a California professional corporation (hereinafter “the Contractor”) is hereby entered into this **day of January, 2019**.

Services pursuant to this contract shall begin on **the 1st day of January, 2019, and shall end on the 31st day of December, 2019**, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to “days” shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day). Also, whenever the term “herein” is referred to, such refers to this contract form, the appendices and all listed attachments.

1.0 Definitions.

- 1.1 **Fresno Housing Authority (“the Agency”).** Any reference herein or within any Appendix to the “Fresno Housing Authority” shall be interpreted to mean the same as the Agency.
- 1.2 **Contracting Officer (CO).** The Agency’s Contracting Officer, typically the Executive Director, but may be another person delegated such authority by the ED.
- 1.3 **Executive Director (ED).** The Agency’s Executive Director/Chief Executive Officer.
- 1.4 **Request For Proposals (RFP).** A competitive solicitation process conducted by the Agency wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment.

- 2.1 **Scope of Services.** The services provided pursuant to this contract generally consist of those services for the Agency as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the Agency at the designated Agency facilities. In addition, the Agency shall retain the right to implement and/or enforce any item issued as a part of RFP No. P18001.

2.2 Use of Services. The Agency shall use the Contractor as the primary source for human resources legal services as described herein and within the Appendices. The Agency reserves the right to use other or additional contractors for human resources legal services when a conflict prevents the Contractor from performing the service or for any reason determined by the Agency.

2.3 Cost/Value of Services.

2.3.1 Contract Value. The Not-To-Exceed (NTE) value of this contract's first term (1/1/19 – 12/31/19) is:

\$150,000.00

The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order.

2.3 Renewal Options. This contract is initially executed for the period of one (1) year with the option, at the Agency's discretion, of four (4) additional one-year option periods, for a maximum total of five (5) years. The contract value of each one-year option will be determined by the Agency at the beginning of each term, based on that year's anticipated needs.

2.4 Time Performance. The Contractor will complete each assigned task as assigned by the Agency.

2.5 Billing Method.

2.6.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:

**Fresno Housing Authority
Attention: Tiffany Mangum
1331 Fulton Street, Fresno, California 93721**

2.6.2 At a minimum, the invoice shall detail the following information:

2.6.2.1 Unique invoice number;

2.6.2.2 Contractor's name, address and telephone number;

2.6.2.3 Date of invoice and/or billing period;

2.6.2.4 Applicable Contract No. (C18023);

2.6.2.5 Applicable Purchase Order No. Issued by the Agency (If applicable);

2.6.2.6 Brief description of services rendered, including applicable time frame, total hours being billed for each service, and at the approved rate (may be submitted in the form of a report);

2.6.2.7 Task Order (if applicable), approved by the Agency's Executive Director or authorized representative; and

2.6.2.8 Total dollar amount being billed.

2.6.3 The Agency will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

3.0 Agency's Obligations. Pursuant to this contract, the Agency agrees to provide the specific services detailed herein and also shall be responsible for the following:

3.1 The Agency agrees to not provide to the Contractor any Task Order assigning work to the Contractor without the prior written approval of an authorized Agency representative.

4.0 Contractor's Obligations. Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

- 4.1 Supervision and Oversight.** The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the Agency pursuant to this contract.
- 4.2 Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor's normal conduct of business.
- 4.3 Compliance with Federal and State Laws:** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 4.4 Confidentiality.** The Contractor, in connection with performing services hereunder, will have access to or may be provided certain confidential information concerning the Agency and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Agency or any other information which a reasonable person could conclude that should remain confidential (collectively Confidential Information), will not be disclosed to any party and without limitation, any employee of the Agency or any client or potential client of the Agency at any time, except for the Contractor's legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Contractor acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Contractor further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Agency. The Agency will have the right to enforce this Contract by specific performance, as well as hold the Contractor liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent. The Contractor agrees that it has received valuable consideration for the entering into of this Contract and agrees to be bound all of its terms and conditions. This Contract will be binding on the Contractor and any attorney, accountant, financial advisor who also may be provided Confidential Information.

4.5 Insurance Requirements.

4.5.1 Insurances. In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

4.5.1.1 General Liability Insurance. Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to premises and fire damage of \$50,000 and medical expenses for any one person of \$5,000 with a deductible not greater than \$1,000. The Agency shall be named upon the certificate issued as an "additional insured," together with providing a copy of the corresponding endorsement evidencing the same.

4.5.1.2 Professional Liability Insurance. Policy of Professional Liability Insurance or Errors & Omissions coverage, minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000 with a deductible of not greater than \$1,000;

4.5.1.3 Automobile Liability Insurance. Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000.

4.5.1.4 Worker's Compensation Insurance. Worker's compensation coverage evidencing carrier and coverage amount.

4.5.1.5 Certificates and Endorsements. The Contractor shall provide to the Agency with current certificate(s) and endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) and endorsement(s) shall be delivered to the following person representing the Agency:

Fresno Housing Authority

Attn: Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721

4.5 Licensing. The Contractor shall also provide to the Agency a copy of the required local Business Tax License. Failure to maintain this license in a current status during the term(s) of this contract shall constitute a material breach thereof.

4.6 Financial Viability and Regulatory Compliance.

4.6.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.

4.6.2 The Contractor agrees to promptly disclose to the Agency any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the Agency in writing within five (5) days of such notification received will constitute a material breach of this contract.

4.6.3 The Contractor further agrees to promptly disclose to the Agency any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this contract.

4.6.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to the Agency within the time periods required herein.

5.0 Modification. This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties.

6.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

7.0 Applicable Laws.

7.1 Compliance with Federal and State Laws. All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

7.2 Jurisdiction of Law. The laws of the State of California shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Fresno County, California is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

8.0 Notices and Reports.

8.1 All notices and/or reports submitted to the Agency by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the Agency:

**Fresno Housing Authority
Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721**

8.2 All notices submitted to the Contractor pursuant to this contract shall be in writing and mailed to the attention of:

**Atkinson, Andelson, Loya, Ruud & Romo
Attn: Kevin Dale
10 River Park East; Suite 240, Fresno, CA 93704**

9.0 Disputed Billings (Charges).

9.1 Procedures: In addition to the procedures detailed within Clause No. 7 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-*

Construction Contracts, Section I—(With or without Maintenance Work), in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

- 9.1.1** The Agency's representative shall, within ten (10) days after the Agency's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
- 9.1.2** If such dispute cannot be resolved by the contractor's response, within ten (10) days after such notification is given, the CO and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 9.1.3** If the CO and the contractor's representative are unable to resolve the dispute through such discussion within ten (10) days, the Agency shall, within ten (10) days thereafter, either:
 - 9.1.3.1** Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of California;
 - 9.1.3.2** Not pay the disputed charge and submit the matter to the appropriate district court in the State of California;
 - 9.1.3.3** Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of California.
- 9.1.4** The decision from arbitration will be binding upon both parties. If the decision is adverse to the Agency, the Agency shall pay the Agency's receipt of the decision. If the decision is in favor of the Agency, the contractor will either:
 - 9.1.4.1** Clear the amount which is ordered from the Agency account; or
 - 9.1.4.2** Repay to the Agency the amount ordered;

Either option shall be completed within ten (10) days after the contractor's receipt of the arbitrator's decision.

- 10.0 Binding Arbitration/Dispute Resolution.** Any and all (material and non-material) disputes or controversies between the parties hereto involving either: (1) the construction or application of any of the terms, covenants or conditions of this Agreement or (2) otherwise arising in any respect with regard to this Agreement, or (3) relating to, arising out of, or resulting from either this Agreement, the performance of this Agreement, or the lack of performance of this Agreement, and/or (4) in any other manner relating to or involving this Agreement, shall not be litigated in any federal or state court or before any state, federal or administrative agency, but rather shall upon written request of one party served on the other be submitted and shall be solely and exclusively resolved by "final and binding" arbitration before a neutral retired Judge, which arbitration shall comply with and be governed by the provisions of the California Arbitration Act (CCP §§1280, et seq.) This Arbitration Agreement constitutes a waiver of any right to a jury trial; and it also waives any right to proceed before any federal or state court or any federal or state administrative agency with regard to the disputes resolution. Said waivers are agreed to because the parties hereto prefer neutral and binding arbitration over any other means of dispute resolution. The neutral (retired Judge) arbitrator shall be mutually agreed upon by the parties; if such an Agreement is not promptly forthcoming, then the retired Judge to serve as arbitrator shall be selected by the Superior Court in accordance with the California Arbitration Act. The Arbitration hearing shall be conducted before a Certified Court Reporter and shall take place in the County of Fresno unless otherwise agreed by both parties. The hearing before the arbitrator of the matters to be arbitrated shall be at a time and place within the County of Fresno as selected by the Arbitrator. The Arbitrator shall select such time and place promptly after his/her appointment, and the arbitrator shall give written notice thereof to each party at least thirty days prior to the date so fixed. The arbitrator shall follow California substantive and procedural law; except only at the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings (in the sole discretion of the arbitrator) need not govern, so that evidence may be admitted or excluded in the discretion of the arbitrator as long as it is trustworthy. The arbitrator shall hear and determine the matter and shall execute and acknowledge the award in writing explaining the basis for his/her ruling. The Arbitrator shall cause a copy of the award to be delivered to each of the parties within twenty (20) calendar days after the conclusion of the evidentiary hearing, unless otherwise agreed by the parties. Said award shall follow California substantive and procedural law. All the arbitrators' fees and all of the certified court reporter's fees (for daily attendance and for providing the arbitrator with the original transcript) shall be shared equally (50/50) by the parties; and all the parties shall bear their own legal fees and their own litigation costs and expenses.

- 10.1 Breach.** Notwithstanding the foregoing, it is hereby agreed and understood that, in the event that if a party to this Agreement breaches or threatens to breach this Agreement, then the other party to the Agreement may seek and obtain an injunction and/or any other equitable relief necessary from a state or federal court of competent jurisdiction, so as to order the continuance of the party's performance under this Agreement, pending the results of the aforementioned arbitration proceeding.
- 10.2 Mediation.** Further, notwithstanding the foregoing, it is agreed that prior to appearing before and conducting the aforementioned binding arbitration hearing, the parties shall engage in a fully privileged and confidential Mediation before a neutral retired Judge. The Mediator retired Judge shall be a different person from the arbitrator retired Judge unless the parties stipulate otherwise. The Mediator shall be mutually selected by the parties; however, if they are unable to agree, then the Mediator shall be selected by the arbitrator. The Mediator's fees and costs shall be shared equally by the parties. Communications during the Mediation process shall remain confidential and barred from introduction into evidence at the arbitration pursuant to the provisions of California Evidence Code §§ 1152 and 1119 and Fed. Rules of Evidence, Rule 408.
- 10.3 Petition to Compel Arbitration, and/or Petition To Enforce The Arbitrator's Award.** Notwithstanding anything herein to the contrary, if either party to this Agreement brings any court action or proceeding to either compel arbitration or to enforce an arbitration award, then the prevailing party shall be entitled to recover reasonable attorneys' fees as well as costs and expenses. The arbitration process itself is not an action or proceeding for purposes of this Agreement.
- 11.0 24 CFR 85.36(i), Procurement.** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the Agency and the Contractor each agree to comply with the following provisions:
- 11.1 Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within ten (10) days, respond in

writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

- 11.1.1** If the contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.
- 11.1.2** Prior to termination, the Agency may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.3** After termination, if the contractor does not agree with the Agency's justification for the termination, the contractor shall have ten (10) days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

- 11.2 Termination For Cause and Convenience.** Notwithstanding any other provision of this Contract, the parties agree that the Agency may terminate this agreement at any time, in its sole and absolute discretion, by delivering written notice to the Contractor. In such event, Contractor shall only be paid for the services actually performed to the date of such written notice.
- 11.3 Reporting.** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 11.4 Patent Rights.** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 11.5 Copy Rights/Rights in Data.** In addition to the requirements contained within Clause No. 5 of *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the Agency has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
- 11.5.1** Except as provided elsewhere in this clause, the Agency shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.
- 11.5.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting

in data first produced in the performance of this contract to the extent provided below.

- 11.5.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the Agency and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the Agency.
- 11.5.4** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the Agency a license of the same scope as identified in the preceding paragraph.
- 11.5.5** The Agency agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Agency may either return the data to the contractor, or cancel or ignore the markings.
- 11.5.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 11.5.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the Agency shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

- 11.5.8** The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the Agency except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any Agency location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.
- 11.6 Access to Records.** Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 11.7 Record Retention.** Both parties hereby guarantee retention of all required records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.
- 11.8 Energy Policy and Conservation Act.** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 11.9 Executive Order 11246.** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

- 11.10 Copeland “Anti-Kickback” Act.** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 11.11 Davis-Bacon-Act.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.12 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.13 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12.0 Additional Considerations.

- 12.1 Non-Escalation.** Unless otherwise specified within the contract documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 12.2 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:
- 12.2.1** Funding is not available;
- 12.2.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

12.2.3 The Agency's requirements in good faith change after award of the contract.

12.3 Local, State, and/or Federal Permits. Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the Agency or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor, and any costs required by the Contractor to procure and provide such necessary permits.

12.4 Government Standards. It is the responsibility of the proposer to ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Fresno Pollution Regulations) and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

12.5 Freight on Bill and Delivery. All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.

12.5.1 The Contractor agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

12.6 Backorders.

12.6.1 The CO must be notified in writing by the contractor within 10 days of any and all backordered materials and/or any incomplete services; and the estimated delivery date.

12.6.2 Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon delivery date, may at the option of the Agency, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the Agency to do so.

- 12.7 Work on Agency Property.** If the Contractor's work under the contract involves operations by the Contractor on Agency premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.
- 12.8 Official, Agent and Employees of the Agency Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 12.9 Subcontractors.** Unless otherwise stated within the contract documents, the Contractor may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 12.10 Salaries and Expenses Relating to the Contractors Employees.** Unless otherwise stated within the RFP documents, the Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 12.11 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 12.12 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.

12.13 Waiver of Breach. A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

12.14 Time of the Essence. Time is of the essence under this agreement as to each provision in which time of performance is a factor.

12.15 Limitation of Liability. In no event shall the Agency be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

12.16 Indemnification.

12.16.1 The Contractor shall indemnify, defend, and hold the Agency (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arising out of, or occurring due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this Contract, (3) comply with the "California Industrial Insurance Act," or any other similar law, ordinance, or decree; or (4) ensure that the any subcontractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the Agency against any loss or damage which was specifically caused by the Agency providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.

12.16.2 In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the Agency, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the Agency. If the Contractor shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and

incidental costs of such defense to the Contractor including attorney's fees and court costs.

12.16.3 Any money due to the Contractor under and by virtue of this contract, which the Agency believes must be withheld from the Contractor to protect the Agency, may be retained by the Agency so long as it is reasonably necessary to ensure the Agency's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the Agency provided, however, neither the Contractor's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the Agency from any potential claims.

12.16.4 The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

12.0 Lobbying Certification. By execution of this contract with the Agency the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

12.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in an accordance with its instructions.

- 12.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 12.4 Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives, where applicable:
- 12.4.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 12.4.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 12.4.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.4.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 12.4.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 12.4.6** HUD Information Bulletin 909-23 which is the following:

12.4.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;

12.4.6.2 Clean Air and Water Certification; and,

12.4.6.3 Energy Policy and Conservation Act.

12.4.7 That the funds that are provided by the Agency and HUD hereunder shall not be used, directly or indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or ineligible Contractor.

12.4.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.

12.4.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

13.0 Section 3 Clause. As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are hereby included as a part of this contract.

13.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- 13.2** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 13.3** The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 13.4** The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 13.5** The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- 13.6** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 13.7** With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and

opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14.0 Appendices.

14.1 The following noted documents are placed under each of the noted appendix and are a part of this contract:

14.1.1 **Appendix No. 1.** form HUD-5370-C (10/2006), *General Condition for Non-Construction Contracts, Section I—(With or without Maintenance Work)*;

14.1.2 **Appendix No. 2.** Scope of Services, as covered in RFP P18001;

14.1.3 **Appendix No. 3.** The proposed fee(s) submitted by this contractor in response to the RFP, or any negotiated fee(s) that resulted thereto, which fee(s) shall apply to each procurement that ensues from this contract.

14.1.5 **Inclusion by Reference.** Included by reference is any document or clause issued as a part of RFP No. P18001 that the Agency may choose to include at any time during the performance of this contract or any options exercised thereto by the Agency. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from the Agency upon written request for such from the contractor.

14.2 **Order of Precedence.** Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within the body of this contract shall take first precedence, then the requirement(s) detailed within each appendix shall take precedence in the order that they are listed above (meaning, the requirement(s) detailed within the lower listed item may not overrule any requirement(s) detailed within a higher listed item).

- 14.0 CERTIFICATIONS.** The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

Atkinson, Andelson, Loya, Ruud & Romo

By: _____ **Date:** _____

Kevin Dale, Partner

Fresno Housing Authority:

By: _____ **Date:** _____

Preston Prince, CEO/Executive Director

BOARD MEMO

O (559) 443-8400

F (559) 445-8981

1331 Fulton Mall
Fresno, California 93721
TTY (800) 735-2929

www.fresnohousing.org

TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: December 18, 2018

AGENDA ITEM: 8e

AUTHOR: Emily De La Guerra

SUBJECT: Consideration of Contract for HUD, USDA, HCD, and other
Federal and State Legal Services

Executive Summary

The purpose of this memo is to request approval from the Boards of Commissioner's to enter into a contract with Ballard Spahr, LLP for legal services pertaining to HUD, USDA, HCD, and other Federal and State matters. The term of this contract is January 1, 2019 to December 31, 2019, with the option to renew the contract for four (4) additional, one-year terms for a total potential contract period of five years.

Fiscal Impact

Based on an independent cost estimate and the projected needs of the organization, the contract with Ballard Spahr, LLP includes an annual amount not to exceed \$50,000. The 2019 Agency Operations and Mixed Finance Budgets includes funding for this contract.

Recommendation

It is recommended that the Boards of Commissioners authorize the CEO/Executive Director to negotiate and execute the contract with Ballard Spahr, LLP for a term of January 1, 2019 to December 31, 2019 and an amount not to exceed \$50,000.

Background Information

In June 2018, the Agency published a Request for Proposals (RFP) to solicit for a variety of legal services. As a result of the RFP, the Agency received proposals from eight legal firms (both local and national) HUD, USDA, HCD, and other Federal and State Legal Services. After proposals were evaluated by a team of Agency staff from a variety of departments, members of the Boards of Commissioners and the Agency's Executive staff conducted interviews with the two firms determined to be in a competitive scoring range. Final scoring was completed after the interview process and Ballard Spahr, LLP was determined to be the highest scoring proposer based on the published evaluation factors. As such, the Agency is requesting approval from the Boards of Commissioners to enter into a contract with Ballard Spahr, LLP for HUD, USDA, HCD, and other Federal and State Legal Services.

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE CITY OF FRESNO

RESOLUTION APPROVING THE CONTRACT FOR HUD, USDA, HCD, AND OTHER
FEDERAL AND STATE LEGAL SERVICES

WHEREAS, the Housing Authority of the City of Fresno (the "Agency") has solicited proposals from qualified law firms for legal services pertaining to HUD, USDA, HCD, and other Federal and State matters; and

WHEREAS, Ballard Spahr, LLP was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with Ballard Spahr, LLP for HUD, USDA, HCD, and other Federal and State Legal Services for one year, beginning January 1, 2019, for an annual amount not to exceed \$50,000; and

WHEREAS, the term of said contract will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the City of Fresno do hereby authorize the Executive Director/CEO, or his designee, to negotiate the contract for HUD, USDA, HCD, and other Federal and State Legal Services with Ballard Spahr, LLP and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF FRESNO COUNTY

RESOLUTION APPROVING THE CONTRACT FOR HUD, USDA, HCD, AND OTHER
FEDERAL AND STATE LEGAL SERVICES

WHEREAS, the Housing Authority of Fresno County (the "Agency") has solicited proposals from qualified law firms for legal services pertaining to HUD, USDA, HCD, and other Federal and State matters; and

WHEREAS, Ballard Spahr, LLP was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with Ballard Spahr, LLP for HUD, USDA, HCD, and other Federal and State Legal Services for one year, beginning January 1, 2019, for an annual amount not to exceed \$50,000; and

WHEREAS, the term of said contract will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of Fresno County do hereby authorize the Executive Director/CEO, or his designee, to negotiate the contract for HUD, USDA, HCD, and other Federal and State Legal Services with Ballard Spahr, LLP and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

INTRODUCTION

This contract by and between the Fresno Housing Authority (hereinafter “the Agency”), and **Ballard Spahr LLP**, (hereinafter “the Contractor”) is hereby entered into this **day of January, 2019.**

Services pursuant to this contract shall begin on **the 1st day of January, 2019, and shall end on the 31st day of December, 2019**, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to “days” shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day). Also, whenever the term “herein” is referred to, such refers to this contract form, the appendices and all listed attachments.

1.0 Definitions.

- 1.1 **Fresno Housing Authority (“the Agency”).** Any reference herein or within any Appendix to the “Fresno Housing Authority” shall be interpreted to mean the same as the Agency.
- 1.2 **Contracting Officer (CO).** The Agency’s Contracting Officer, typically the Executive Director, but may be another person delegated such authority by the ED.
- 1.3 **Executive Director (ED).** The Agency’s Executive Director/Chief Executive Officer.
- 1.4 **Request For Proposals (RFP).** A competitive solicitation process conducted by the Agency wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment.

- 2.1 **Scope of Services.** The services provided pursuant to this contract generally consist of those services for the Agency as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the Agency at the designated Agency facilities. In addition, the Agency shall retain the right to implement and/or enforce any item issued as a part of RFP No. P18001.

2.2 Use of Services. The Agency shall use the Contractor as the primary source for HUD, USDA, HCD, and other Federal and State Funding Partners legal services as described herein and within the Appendices. The Agency reserves the right to use other or additional contractors for HUD, USDA, HCD, and other Federal and State Funding Partners legal services when a conflict prevents the Contractor from performing the service or when using another Contractor is advantageous to the Agency.

2.3 Cost/Value of Services.

2.3.1 Contract Value. The Not-To-Exceed (NTE) value of this contract's first term (1/1/19 – 12/31/19) is:

\$50,000.00

The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order.

2.3 Renewal Options. This contract is initially executed for the period of one (1) year with the option, at the Agency's discretion, of four (4) additional one-year option periods, for a maximum total of five (5) years. The contract value of each one-year option will be determined by the Agency at the beginning of each term, based on that year's anticipated needs.

2.4 Time Performance. The Contractor will complete each assigned task as assigned by the Agency.

2.5 Billing Method.

2.6.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:

Fresno Housing Authority
Attention: Tiffany Mangum
1331 Fulton Street, Fresno, California 93721

2.6.2 At a minimum, the invoice shall detail the following information:

- 2.6.2.1** Unique invoice number;
- 2.6.2.2** Contractor's name, address and telephone number;
- 2.6.2.3** Date of invoice and/or billing period;
- 2.6.2.4** Applicable Contract No. (C18023);
- 2.6.2.5** Applicable Purchase Order No. Issued by the Agency;
- 2.6.2.6** Brief description of services rendered, including applicable time frame, total hours being billed for each service, and at the approved rate (may be submitted in the form of a report);
- 2.6.2.7** Task Order (if applicable), approved by the Agency's Executive Director or authorized representative; and
- 2.6.2.8** Total dollar amount being billed.

2.6.3 The Agency will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

3.0 Agency's Obligations. Pursuant to this contract, the Agency agrees to provide the specific services detailed herein and also shall be responsible for the following:

3.1 The Agency agrees to not provide to the Contractor any Task Order assigning work to the Contractor without the prior written approval of an authorized Agency representative.

4.0 Contractor's Obligations. Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

- 4.1 Supervision and Oversight.** The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the Agency pursuant to this contract.
- 4.2 Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor's normal conduct of business.
- 4.3 Compliance with Federal and State Laws:** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 4.4 Confidentiality.** The Contractor, in connection with performing services hereunder, will have access to or may be provided certain confidential information concerning the Agency and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Agency or any other information which a reasonable person could conclude that should remain confidential (collectively Confidential Information), will not be disclosed to any party and without limitation, any employee of the Agency or any client or potential client of the Agency at any time, except for the Contractor's legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Contractor acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Contractor further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Agency. The Agency will have the right to enforce this Contract by specific performance, as well as hold the Contractor liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent. The Contractor agrees that it has received valuable consideration for the entering into of this Contract and agrees to be bound all of its terms and conditions. This Contract will be binding on the Contractor and any attorney, accountant, financial advisor who also may be provided Confidential Information.

4.5 Insurance Requirements.

4.5.1 Insurances. In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

4.5.1.1 General Liability Insurance. Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to premises and fire damage of \$50,000 and medical expenses for any one person of \$5,000 with a deductible not greater than \$1,000. The Agency shall be named upon the certificate issued as an "additional insured," together with providing a copy of the corresponding endorsement evidencing the same.

4.5.1.2 Professional Liability Insurance. Policy of Professional Liability Insurance or Errors & Omissions coverage, minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000 with a deductible of not greater than \$1,000;

4.5.1.3 Automobile Liability Insurance. Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000.

4.5.1.4 Worker's Compensation Insurance. Worker's compensation coverage evidencing carrier and coverage amount.

4.5.1.5 Certificates and Endorsements. The Contractor shall provide to the Agency with current certificate(s) and endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) and endorsement(s) shall be delivered to the following person representing the Agency:

Fresno Housing Authority

Attn: Emily De La Guerra, Director of Finance & Administrative Services

1331 Fulton Street, Fresno, California 93721

4.6 Licensing. The Contractor shall also provide to the Agency a copy of the required local Business Tax License. Failure to maintain this license in a current status during the term(s) of this contract shall constitute a material breach thereof.

4.7 Financial Viability and Regulatory Compliance.

4.7.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.

4.7.2 The Contractor agrees to promptly disclose to the Agency any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the Agency in writing within five (5) days of such notification received will constitute a material breach of this contract.

4.7.3 The Contractor further agrees to promptly disclose to the Agency any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this contract.

4.7.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to the Agency within the time periods required herein.

5.0 Modification. This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties.

6.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

7.0 Applicable Laws.

7.1 Compliance with Federal and State Laws. All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

7.2 Jurisdiction of Law. The laws of the State of California shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Fresno County, California is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

8.0 Notices and Reports.

8.1 All notices and/or reports submitted to the Agency by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the Agency:

**Fresno Housing Authority
Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721**

8.2 All notices submitted to the Contractor pursuant to this contract shall be in writing and mailed to the attention of:

**Ballard Spahr, LLP
Attn: Teri M. Guarnaccia
300 E. Lombard Street, Baltimore, MD 21202**

9.0 Disputed Billings (Charges).

- 9.1 Procedures:** In addition to the procedures detailed within Clause No. 7 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:
- 9.1.1** The Agency's representative shall, within ten (10) days after the Agency's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
- 9.1.2** If such dispute cannot be resolved by the contractor's response, within ten (10) days after such notification is given, the CO and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 9.1.3** If the CO and the contractor's representative are unable to resolve the dispute through such discussion within ten (10) days, the Agency shall, within ten (10) days thereafter, either:
- 9.1.3.1** Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of California;
- 9.1.3.2** Not pay the disputed charge and submit the matter to the appropriate district court in the State of California;
- 9.1.3.3** Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of California.
- 9.1.4** The decision from arbitration will be binding upon both parties. If the decision is adverse to the Agency, the Agency shall pay the Agency's receipt of the decision. If the decision is in favor of the Agency, the contractor will either:
- 9.1.4.1** Clear the amount which is ordered from the Agency account; or

9.1.4.2 Repay to the Agency the amount ordered;

Either option shall be completed within ten (10) days after the contractor's receipt of the arbitrator's decision.

- 10.0 Binding Arbitration/Dispute Resolution.** Any and all (material and non-material) disputes or controversies between the parties hereto involving either: (1) the construction or application of any of the terms, covenants or conditions of this Agreement or (2) otherwise arising in any respect with regard to this Agreement, or (3) relating to, arising out of, or resulting from either this Agreement, the performance of this Agreement, or the lack of performance of this Agreement, and/or (4) in any other manner relating to or involving this Agreement, shall not be litigated in any federal or state court or before any state, federal or administrative agency, but rather shall upon written request of one party served on the other be submitted and shall be solely and exclusively resolved by "final and binding" arbitration before a neutral retired Judge, which arbitration shall comply with and be governed by the provisions of the California Arbitration Act (CCP §§1280, et seq.) This Arbitration Agreement constitutes a waiver of any right to a jury trial; and it also waives any right to proceed before any federal or state court or any federal or state administrative agency with regard to the disputes resolution. Said waivers are agreed to because the parties hereto prefer neutral and binding arbitration over any other means of dispute resolution. The neutral (retired Judge) arbitrator shall be mutually agreed upon by the parties; if such an Agreement is not promptly forthcoming, then the retired Judge to serve as arbitrator shall be selected by the Superior Court in accordance with the California Arbitration Act. The Arbitration hearing shall be conducted before a Certified Court Reporter and shall take place in the County of Fresno unless otherwise agreed by both parties. The hearing before the arbitrator of the matters to be arbitrated shall be at a time and place within the County of Fresno as selected by the Arbitrator. The Arbitrator shall select such time and place promptly after his/her appointment, and the arbitrator shall give written notice thereof to each party at least thirty days prior to the date so fixed. The arbitrator shall follow California substantive and procedural law; except only at the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings (in the sole discretion of the arbitrator) need not govern, so that evidence may be admitted or excluded in the discretion of the arbitrator as long as it is trustworthy. The arbitrator shall hear and determine the matter and shall execute and acknowledge the award in writing explaining the basis for his/her ruling. The Arbitrator shall cause a copy of the award to be delivered to each of the parties within twenty (20) calendar days after the conclusion of the evidentiary hearing, unless otherwise agreed by the parties. Said award shall follow California substantive and procedural law. All the arbitrators' fees and all of the certified court reporter's fees (for daily attendance and for providing the arbitrator with the original transcript) shall be

shared equally (50/50) by the parties; and all the parties shall bear their own legal fees and their own litigation costs and expenses.

- 10.1 Breach.** Notwithstanding the foregoing, it is hereby agreed and understood that, in the event that if a party to this Agreement breaches or threatens to breach this Agreement, then the other party to the Agreement may seek and obtain an injunction and/or any other equitable relief necessary from a state or federal court of competent jurisdiction, so as to order the continuance of the party's performance under this Agreement, pending the results of the aforementioned arbitration proceeding.
- 10.2 Mediation.** Further, notwithstanding the foregoing, it is agreed that prior to appearing before and conducting the aforementioned binding arbitration hearing, the parties shall engage in a fully privileged and confidential Mediation before a neutral retired Judge. The Mediator retired Judge shall be a different person from the arbitrator retired Judge unless the parties stipulate otherwise. The Mediator shall be mutually selected by the parties; however, if they are unable to agree, then the Mediator shall be selected by the arbitrator. The Mediator's fees and costs shall be shared equally by the parties. Communications during the Mediation process shall remain confidential and barred from introduction into evidence at the arbitration pursuant to the provisions of California Evidence Code §§ 1152 and 1119 and Fed. Rules of Evidence, Rule 408.
- 10.3 Petition to Compel Arbitration, and/or Petition To Enforce The Arbitrator's Award.** Notwithstanding anything herein to the contrary, if either party to this Agreement brings any court action or proceeding to either compel arbitration or to enforce an arbitration award, then the prevailing party shall be entitled to recover reasonable attorneys' fees as well as costs and expenses. The arbitration process itself is not an action or proceeding for purposes of this Agreement.
- 11.0 24 CFR 85.36(i), Procurement.** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the Agency and the Contractor each agree to comply with the following provisions:
- 11.1 Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the

right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within ten (10) days, respond in writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

- 11.1.1** If the contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.
- 11.1.2** Prior to termination, the Agency may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.3** After termination, if the contractor does not agree with the Agency's justification for the termination, the contractor shall have ten (10) days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).

11.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

11.2 Termination For Cause and Convenience. Notwithstanding any other provision of this Contract, the parties agree that the Agency may terminate this agreement at any time, in its sole and absolute discretion, by delivering written notice to the Contractor. In such event, Contractor shall only be paid for the services actually performed to the date of such written notice.

11.3 Reporting. Both parties hereby agree to comply with any reporting requirements that may be detailed herein.

11.4 Patent Rights. Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.

11.5 Copy Rights/Rights in Data. In addition to the requirements contained within Clause No. 5 of *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the Agency has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:

11.5.1 Except as provided elsewhere in this clause, the Agency shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.

11.5.2 The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent

provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.

- 11.5.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the Agency and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the Agency.
- 11.5.4** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the Agency a license of the same scope as identified in the preceding paragraph.
- 11.5.5** The Agency agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Agency may either return the data to the contractor, or cancel or ignore the markings.
- 11.5.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 11.5.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the Agency shall have the rights set forth below to use, duplicate, or

disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

11.5.8 The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the Agency except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any Agency location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

11.6 Access to Records. Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11.7 Record Retention. Both parties hereby guarantee retention of all required records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.

11.8 Energy Policy and Conservation Act. Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

11.9 Executive Order 11246. For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by

Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

- 11.10 Copeland “Anti-Kickback” Act.** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 11.11 Davis-Bacon-Act.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.12 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.13 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12.0 Additional Considerations.

- 12.1 Non-Escalation.** Unless otherwise specified within the contract documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 12.2 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:

12.2.1 Funding is not available;

12.2.2 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

12.2.3 The Agency's requirements in good faith change after award of the contract.

12.3 Local, State, and/or Federal Permits. Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the Agency or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor, and any costs required by the Contractor to procure and provide such necessary permits.

12.4 Government Standards. It is the responsibility of the proposer to ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Fresno Pollution Regulations) and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

12.5 Freight on Bill and Delivery. All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.

12.5.1 The Contractor agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

12.6 Backorders.

12.6.1 The CO must be notified in writing by the contractor within 10 days of any and all backordered materials and/or any incomplete services; and the estimated delivery date.

12.6.2 Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon

delivery date, may at the option of the Agency, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the Agency to do so.

- 12.7 Work on Agency Property.** If the Contractor's work under the contract involves operations by the Contractor on Agency premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.
- 12.8 Official, Agent and Employees of the Agency Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 12.9 Subcontractors.** Unless otherwise stated within the contract documents, the Contractor may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 12.10 Salaries and Expenses Relating to the Contractors Employees.** Unless otherwise stated within the RFP documents, the Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 12.11 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 12.12 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the

application thereof to other situations or circumstances shall not be affected thereby.

12.13 Waiver of Breach. A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

12.14 Time of the Essence. Time is of the essence under this agreement as to each provision in which time of performance is a factor.

12.15 Limitation of Liability. In no event shall the Agency be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

12.16 Indemnification.

12.16.1 The Contractor shall indemnify, defend, and hold the Agency (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arise out of, or occur due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this contract, (3) comply with the "California Industrial Insurance Act," or any other similar law, ordinance, or decree; or (4) ensure that the any subcontractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the Agency against any loss or damage which was specifically caused by the Agency providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.

12.16.2 In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the Agency, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the Agency.

If the Contractor shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the Contractor including attorney's fees and court costs.

12.16.3 Any money due to the Contractor under and by virtue of this contract, which the Agency believes must be withheld from the Contractor to protect the Agency, may be retained by the Agency so long as it is reasonably necessary to ensure the Agency's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the Agency provided, however, neither the Contractor's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the Agency from any potential claims.

12.16.4 The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

12.0 Lobbying Certification. By execution of this contract with the Agency the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

12.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in an accordance with its instructions.

- 12.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 12.4 Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives, where applicable:
- 12.4.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 12.4.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 1901 et. seq.).
- 12.4.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.4.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 12.4.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 12.4.6** HUD Information Bulletin 909-23 which is the following:

12.4.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;

12.4.6.2 Clean Air and Water Certification; and,

12.4.6.3 Energy Policy and Conservation Act.

12.4.7 That the funds that are provided by the Agency and HUD hereunder shall not be used, directly or indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or ineligible Contractor.

12.4.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.

12.4.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

13.0 Section 3 Clause. As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are hereby included as a part of this contract.

13.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to

low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- 13.2** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 13.3** The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 13.4** The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 13.5** The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- 13.6** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 13.7** With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education

Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14.0 Appendices.

14.1 The following noted documents are placed under each of the noted appendix and are a part of this contract:

14.1.1 **Appendix No. 1.** form HUD-5370-C (10/2006), *General Condition for Non-Construction Contracts, Section I—(With or without Maintenance Work)*;

14.1.2 **Appendix No. 2.** Scope of Services, as covered in RFP P18001;

14.1.3 **Appendix No. 3.** The proposed fee(s) submitted by this contractor in response to the RFP, or any negotiated fee(s) that resulted thereto, which fee(s) shall apply to each procurement that ensues from this contract.

14.1.5 **Inclusion by Reference.** Included by reference is any document or clause issued as a part of RFP No. P18001 that the Agency may choose to include at any time during the performance of this contract or any options exercised thereto by the Agency. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from the Agency upon written request for such from the contractor.

14.2 **Order of Precedence.** Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within the body of this contract shall take first precedence, then the requirement(s) detailed within each appendix shall take precedence in the order that they are listed above (meaning, the requirement(s) detailed within the lower listed item may not overrule any requirement(s) detailed within a higher listed item).

- 14.0 CERTIFICATIONS.** The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

Ballard Spahr, LLP

By: _____ **Date:** _____

Teri M. Guarnaccia, Partner

Fresno Housing Authority:

By: _____ **Date:** _____


Preston Prince, CEO/Executive Director

BOARD MEMO

O (559) 443-8400
F (559) 445-8981

1331 Fulton Mall
Fresno, California 93721
TTY (800) 735-2929

www.fresnohousing.org

TO: Boards of Commissioners
Fresno Housing Authority
FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018
BOARD MEETING: December 18, 2018
AGENDA ITEM: 8f
AUTHOR: Emily De La Guerra

SUBJECT: Consideration of Contract for Affordable Housing Development
Legal Services

Executive Summary

The purpose of this memo is to request approval from the Boards of Commissioners to enter into a contract with Ballard Spahr, LLP for legal services pertaining to the development of affordable housing. The term of said contract is January 1, 2019 to December 31, 2019, with the option to renew the contract for four (4) additional, one-year terms for a total potential contract period of five years.

Fiscal Impact

Based on an independent cost estimate and the projected needs of the organization, the contract with Ballard Spahr, LLP includes an annual amount not to exceed \$600,000. These costs will be paid by project-specific construction financing related to the development of the affordable housing.

Recommendation

It is recommended that the Boards of Commissioners authorize the CEO/Executive Director to negotiate and execute the contract with Ballard Spahr, LLP for a term of January 1, 2019 to December 31, 2019 and an amount not to exceed \$600,000.

Background Information

In June 2018, the Agency published a Request for Proposals (RFP) to solicit for a variety of legal services. As a result of the RFP, the Agency received proposals from nine legal firms (both local and national) for Development of Affordable Housing Legal Services. After proposals were evaluated by a team of Agency staff from a variety of departments, members of the Boards of Commissioners and the Agency's Executive staff conducted interviews with the two firms determined to be in a competitive scoring range. Final scoring was completed after the interview process and Ballard Spahr, LLP was determined to be the highest scoring proposer based on the published evaluation factors. As such, the Agency is requesting approval from the Boards of Commissioners to enter into a contract with Ballard Spahr, LLP for Development of Affordable Housing Legal Services.

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF THE CITY OF FRESNO

**RESOLUTION APPROVING THE CONTRACT FOR AFFORDABLE HOUSING
DEVELOPMENT LEGAL SERVICES**

WHEREAS, the Housing Authority of the City of Fresno (the "Agency") has solicited proposals from qualified law firms for legal services pertaining to the development of affordable housing; and

WHEREAS, Ballard Spahr, LLP was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with Ballard Spahr, LLP for affordable housing development legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$600,000; and

WHEREAS, the term of said contract will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the City of Fresno do hereby authorize Preston Prince, Executive Director/CEO, or his designee, to negotiate the contract for affordable housing development legal services with Ballard Spahr, LLP and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF FRESNO COUNTY

**RESOLUTION APPROVING THE CONTRACT FOR AFFORDABLE HOUSING
DEVELOPMENT LEGAL SERVICES**

WHEREAS, the Housing Authority of Fresno County (the "Agency") has solicited proposals from qualified law firms for legal services pertaining to the development of affordable housing; and

WHEREAS, Ballard Spahr, LLP was a responsive and responsible firm who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into a contract with Ballard Spahr, LLP for affordable housing development legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$600,000; and

WHEREAS, the term of said contract will expire December 31, 2019, with the option to extend the contract for four additional one year terms, for a total contract period of five years, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD);

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of Fresno County do hereby authorize Preston Prince, Executive Director/CEO, or his designee, to negotiate the contract for affordable housing development legal services with Ballard Spahr, LLP and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

INTRODUCTION

This contract by and between the Fresno Housing Authority (hereinafter “the Agency”), and **Ballard Spahr LLP**, (hereinafter “the Contractor”) is hereby entered into this **day of January, 2019.**

Services pursuant to this contract shall begin on **the 1st day of January, 2019, and shall end on the 31st day of December, 2019**, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to “days” shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day). Also, whenever the term “herein” is referred to, such refers to this contract form, the appendices and all listed attachments.

1.0 Definitions.

- 1.1 **Fresno Housing Authority (“the Agency”).** Any reference herein or within any Appendix to the “Fresno Housing Authority” shall be interpreted to mean the same as the Agency.
- 1.2 **Contracting Officer (CO).** The Agency’s Contracting Officer, typically the Executive Director, but may be another person delegated such authority by the ED.
- 1.3 **Executive Director (ED).** The Agency’s Executive Director/Chief Executive Officer.
- 1.4 **Request For Proposals (RFP).** A competitive solicitation process conducted by the Agency wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment.

- 2.1 **Scope of Services.** The services provided pursuant to this contract generally consist of those services for the Agency as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the Agency at the designated Agency facilities. In addition, the Agency shall retain the right to implement and/or enforce any item issued as a part of RFP No. P18001.

2.2 Use of Services. The Agency shall use the Contractor as the primary source for development of affordable housing legal services as described herein and within the Appendices. The Agency reserves the right to use other or additional contractors for development of affordable housing legal services when a conflict prevents the Contractor from performing the service or when using another Contractor is advantageous to the Agency.

2.3 Cost/Value of Services.

2.3.1 Contract Value. The Not-To-Exceed (NTE) value of this contract's first term (1/1/19 – 12/31/19) is:

\$600,000.00

The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order.

2.3 Renewal Options. This contract is initially executed for the period of one (1) year with the option, at the Agency's discretion, of four (4) additional one-year option periods, for a maximum total of five (5) years. The contract value of each one-year option will be determined by the Agency at the beginning of each term, based on that year's anticipated needs.

2.4 Time Performance. The Contractor will complete each assigned task as assigned by the Agency.

2.5 Billing Method.

2.6.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:

Fresno Housing Authority
Attention: Tiffany Mangum

1331 Fulton Street, Fresno, California 93721

2.6.2 At a minimum, the invoice shall detail the following information:

2.6.2.1 Unique invoice number;

2.6.2.2 Contractor's name, address and telephone number;

2.6.2.3 Date of invoice and/or billing period;

2.6.2.4 Applicable Contract No. (C18023);

2.6.2.5 Applicable Purchase Order No. Issued by the Agency;

2.6.2.6 Brief description of services rendered, including applicable time frame, total hours being billed for each service, and at the approved rate (may be submitted in the form of a report);

2.6.2.7 Task Order (if applicable), approved by the Agency's Executive Director or authorized representative; and

2.6.2.8 Total dollar amount being billed.

2.6.3 The Agency will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

3.0 Agency's Obligations. Pursuant to this contract, the Agency agrees to provide the specific services detailed herein and also shall be responsible for the following:

3.1 The Agency agrees to not provide to the Contractor any Task Order assigning work to the Contractor without the prior written approval of an authorized Agency representative.

4.0 Contractor's Obligations. Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

- 4.1 Supervision and Oversight.** The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the Agency pursuant to this contract.
- 4.2 Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor's normal conduct of business.
- 4.3 Compliance with Federal and State Laws:** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 4.4 Confidentiality.** The Contractor, in connection with performing services hereunder, will have access to or may be provided certain confidential information concerning the Agency and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Agency or any other information which a reasonable person could conclude that should remain confidential (collectively Confidential Information), will not be disclosed to any party and without limitation, any employee of the Agency or any client or potential client of the Agency at any time, except for the Contractor's legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Contractor acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Contractor further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Agency. The Agency will have the right to enforce this Contract by specific performance, as well as hold the Contractor liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent. The Contractor agrees that it has received valuable consideration for the entering into of this Contract and agrees to be bound all of its terms and conditions. This Contract will be binding on the Contractor and any attorney, accountant, financial advisor who also may be provided Confidential Information.

4.5 Insurance Requirements.

4.5.1 Insurances. In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

4.5.1.1 General Liability Insurance. Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to premises and fire damage of \$50,000 and medical expenses for any one person of \$5,000 with a deductible not greater than \$1,000. The Agency shall be named upon the certificate issued as an "additional insured," together with providing a copy of the corresponding endorsement evidencing the same.

4.5.1.2 Professional Liability Insurance. Policy of Professional Liability Insurance or Errors & Omissions coverage, minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000 with a deductible of not greater than \$1,000;

4.5.1.3 Automobile Liability Insurance. Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000.

4.5.1.4 Worker's Compensation Insurance. Worker's compensation coverage evidencing carrier and coverage amount.

4.5.1.5 Certificates and Endorsements. The Contractor shall provide to the Agency with current certificate(s) and endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) and endorsement(s) shall be delivered to the following person representing the Agency:

Fresno Housing Authority
Attn: Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721

4.6 Licensing. The Contractor shall also provide to the Agency a copy of the required local Business Tax License. Failure to maintain this license in a current status during the term(s) of this contract shall constitute a material breach thereof.

4.7 Financial Viability and Regulatory Compliance.

4.7.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.

4.7.2 The Contractor agrees to promptly disclose to the Agency any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the Agency in writing within five (5) days of such notification received will constitute a material breach of this contract.

4.7.3 The Contractor further agrees to promptly disclose to the Agency any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this contract.

4.7.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to the Agency within the time periods required herein.

5.0 Modification. This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties.

6.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

7.0 Applicable Laws.

7.1 Compliance with Federal and State Laws. All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

7.2 Jurisdiction of Law. The laws of the State of California shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Fresno County, California is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

8.0 Notices and Reports.

8.1 All notices and/or reports submitted to the Agency by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the Agency:

Fresno Housing Authority
Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721

8.2 All notices submitted to the Contractor pursuant to this contract shall be in writing and mailed to the attention of:

Ballard Spahr, LLP
Attn: Teri M. Guarnaccia
300 E. Lombard Street, Baltimore, MD 21202

9.0 Disputed Billings (Charges).

- 9.1 Procedures:** In addition to the procedures detailed within Clause No. 7 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:
- 9.1.1** The Agency's representative shall, within ten (10) days after the Agency's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
- 9.1.2** If such dispute cannot be resolved by the contractor's response, within ten (10) days after such notification is given, the CO and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 9.1.3** If the CO and the contractor's representative are unable to resolve the dispute through such discussion within ten (10) days, the Agency shall, within ten (10) days thereafter, either:
- 9.1.3.1** Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of California;
- 9.1.3.2** Not pay the disputed charge and submit the matter to the appropriate district court in the State of California;
- 9.1.3.3** Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of California.
- 9.1.4** The decision from arbitration will be binding upon both parties. If the decision is adverse to the Agency, the Agency shall pay the Agency's receipt of the decision. If the decision is in favor of the Agency, the contractor will either:
- 9.1.4.1** Clear the amount which is ordered from the Agency account; or

9.1.4.2 Repay to the Agency the amount ordered;

Either option shall be completed within ten (10) days after the contractor's receipt of the arbitrator's decision.

- 10.0 Binding Arbitration/Dispute Resolution.** Any and all (material and non-material) disputes or controversies between the parties hereto involving either: (1) the construction or application of any of the terms, covenants or conditions of this Agreement or (2) otherwise arising in any respect with regard to this Agreement, or (3) relating to, arising out of, or resulting from either this Agreement, the performance of this Agreement, or the lack of performance of this Agreement, and/or (4) in any other manner relating to or involving this Agreement, shall not be litigated in any federal or state court or before any state, federal or administrative agency, but rather shall upon written request of one party served on the other be submitted and shall be solely and exclusively resolved by "final and binding" arbitration before a neutral retired Judge, which arbitration shall comply with and be governed by the provisions of the California Arbitration Act (CCP §§1280, et seq.) This Arbitration Agreement constitutes a waiver of any right to a jury trial; and it also waives any right to proceed before any federal or state court or any federal or state administrative agency with regard to the disputes resolution. Said waivers are agreed to because the parties hereto prefer neutral and binding arbitration over any other means of dispute resolution. The neutral (retired Judge) arbitrator shall be mutually agreed upon by the parties; if such an Agreement is not promptly forthcoming, then the retired Judge to serve as arbitrator shall be selected by the Superior Court in accordance with the California Arbitration Act. The Arbitration hearing shall be conducted before a Certified Court Reporter and shall take place in the County of Fresno unless otherwise agreed by both parties. The hearing before the arbitrator of the matters to be arbitrated shall be at a time and place within the County of Fresno as selected by the Arbitrator. The Arbitrator shall select such time and place promptly after his/her appointment, and the arbitrator shall give written notice thereof to each party at least thirty days prior to the date so fixed. The arbitrator shall follow California substantive and procedural law; except only at the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings (in the sole discretion of the arbitrator) need not govern, so that evidence may be admitted or excluded in the discretion of the arbitrator as long as it is trustworthy. The arbitrator shall hear and determine the matter and shall execute and acknowledge the award in writing explaining the basis for his/her ruling. The Arbitrator shall cause a copy of the award to be delivered to each of the parties within twenty (20) calendar days after the conclusion of the evidentiary hearing, unless otherwise agreed by the parties. Said award shall follow California substantive and procedural law. All the arbitrators' fees and all of the certified court reporter's fees (for daily attendance and for providing the arbitrator with the original transcript) shall be

shared equally (50/50) by the parties; and all the parties shall bear their own legal fees and their own litigation costs and expenses.

- 10.1 Breach.** Notwithstanding the foregoing, it is hereby agreed and understood that, in the event that if a party to this Agreement breaches or threatens to breach this Agreement, then the other party to the Agreement may seek and obtain an injunction and/or any other equitable relief necessary from a state or federal court of competent jurisdiction, so as to order the continuance of the party's performance under this Agreement, pending the results of the aforementioned arbitration proceeding.
- 10.2 Mediation.** Further, notwithstanding the foregoing, it is agreed that prior to appearing before and conducting the aforementioned binding arbitration hearing, the parties shall engage in a fully privileged and confidential Mediation before a neutral retired Judge. The Mediator retired Judge shall be a different person from the arbitrator retired Judge unless the parties stipulate otherwise. The Mediator shall be mutually selected by the parties; however, if they are unable to agree, then the Mediator shall be selected by the arbitrator. The Mediator's fees and costs shall be shared equally by the parties. Communications during the Mediation process shall remain confidential and barred from introduction into evidence at the arbitration pursuant to the provisions of California Evidence Code §§ 1152 and 1119 and Fed. Rules of Evidence, Rule 408.
- 10.3 Petition to Compel Arbitration, and/or Petition To Enforce The Arbitrator's Award.** Notwithstanding anything herein to the contrary, if either party to this Agreement brings any court action or proceeding to either compel arbitration or to enforce an arbitration award, then the prevailing party shall be entitled to recover reasonable attorneys' fees as well as costs and expenses. The arbitration process itself is not an action or proceeding for purposes of this Agreement.
- 11.0 24 CFR 85.36(i), Procurement.** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the Agency and the Contractor each agree to comply with the following provisions:
- 11.1 Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the

right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within ten (10) days, respond in writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

- 11.1.1** If the contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.
- 11.1.2** Prior to termination, the Agency may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.3** After termination, if the contractor does not agree with the Agency's justification for the termination, the contractor shall have ten (10) days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).

11.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

11.2 Termination For Cause and Convenience. Notwithstanding any other provision of this Contract, the parties agree that the Agency may terminate this agreement at any time, in its sole and absolute discretion, by delivering written notice to the Contractor. In such event, Contractor shall only be paid for the services actually performed to the date of such written notice.

11.3 Reporting. Both parties hereby agree to comply with any reporting requirements that may be detailed herein.

11.4 Patent Rights. Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.

11.5 Copy Rights/Rights in Data. In addition to the requirements contained within Clause No. 5 of *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the Agency has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:

11.5.1 Except as provided elsewhere in this clause, the Agency shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.

11.5.2 The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent

provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.

- 11.5.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the Agency and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the Agency.
- 11.5.4** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the Agency a license of the same scope as identified in the preceding paragraph.
- 11.5.5** The Agency agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Agency may either return the data to the contractor, or cancel or ignore the markings.
- 11.5.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 11.5.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the Agency shall have the rights set forth below to use, duplicate, or

disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

11.5.8 The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the Agency except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any Agency location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

11.6 Access to Records. Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11.7 Record Retention. Both parties hereby guarantee retention of all required records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.

11.8 Energy Policy and Conservation Act. Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

11.9 Executive Order 11246. For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by

Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

- 11.10 Copeland “Anti-Kickback” Act.** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 11.11 Davis-Bacon-Act.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.12 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.13 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12.0 Additional Considerations.

- 12.1 Non-Escalation.** Unless otherwise specified within the contract documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 12.2 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:

12.2.1 Funding is not available;

12.2.2 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

12.2.3 The Agency's requirements in good faith change after award of the contract.

12.3 Local, State, and/or Federal Permits. Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the Agency or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor, and any costs required by the Contractor to procure and provide such necessary permits.

12.4 Government Standards. It is the responsibility of the proposer to ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Fresno Pollution Regulations) and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

12.5 Freight on Bill and Delivery. All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.

12.5.1 The Contractor agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

12.6 Backorders.

12.6.1 The CO must be notified in writing by the contractor within 10 days of any and all backordered materials and/or any incomplete services; and the estimated delivery date.

12.6.2 Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon

delivery date, may at the option of the Agency, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the Agency to do so.

- 12.7 Work on Agency Property.** If the Contractor's work under the contract involves operations by the Contractor on Agency premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.
- 12.8 Official, Agent and Employees of the Agency Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 12.9 Subcontractors.** Unless otherwise stated within the contract documents, the Contractor may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 12.10 Salaries and Expenses Relating to the Contractors Employees.** Unless otherwise stated within the RFP documents, the Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 12.11 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 12.12 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the

application thereof to other situations or circumstances shall not be affected thereby.

12.13 Waiver of Breach. A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

12.14 Time of the Essence. Time is of the essence under this agreement as to each provision in which time of performance is a factor.

12.15 Limitation of Liability. In no event shall the Agency be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

12.16 Indemnification.

12.16.1 The Contractor shall indemnify, defend, and hold the Agency (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arise out of, or occur due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this contract, (3) comply with the "California Industrial Insurance Act," or any other similar law, ordinance, or decree; or (4) ensure that the any subcontractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the Agency against any loss or damage which was specifically caused by the Agency providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.

12.16.2 In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the Agency, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the Agency.

If the Contractor shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the Contractor including attorney's fees and court costs.

12.16.3 Any money due to the Contractor under and by virtue of this contract, which the Agency believes must be withheld from the Contractor to protect the Agency, may be retained by the Agency so long as it is reasonably necessary to ensure the Agency's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the Agency provided, however, neither the Contractor's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the Agency from any potential claims.

12.16.4 The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

12.0 Lobbying Certification. By execution of this contract with the Agency the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

12.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in an accordance with its instructions.

- 12.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 12.4 Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives, where applicable:
- 12.4.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 12.4.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 1901 et. seq.).
- 12.4.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.4.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 12.4.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 12.4.6** HUD Information Bulletin 909-23 which is the following:

12.4.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;

12.4.6.2 Clean Air and Water Certification; and,

12.4.6.3 Energy Policy and Conservation Act.

12.4.7 That the funds that are provided by the Agency and HUD hereunder shall not be used, directly or indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or ineligible Contractor.

12.4.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.

12.4.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

13.0 Section 3 Clause. As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are hereby included as a part of this contract.

13.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to

low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- 13.2** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 13.3** The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 13.4** The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 13.5** The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- 13.6** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 13.7** With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education

Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14.0 Appendices.

14.1 The following noted documents are placed under each of the noted appendix and are a part of this contract:

14.1.1 **Appendix No. 1.** form HUD-5370-C (10/2006), *General Condition for Non-Construction Contracts, Section I—(With or without Maintenance Work)*;

14.1.2 **Appendix No. 2.** Scope of Services, as covered in RFP P18001;

14.1.3 **Appendix No. 3.** The proposed fee(s) submitted by this contractor in response to the RFP, or any negotiated fee(s) that resulted thereto, which fee(s) shall apply to each procurement that ensues from this contract.

14.1.5 **Inclusion by Reference.** Included by reference is any document or clause issued as a part of RFP No. P18001 that the Agency may choose to include at any time during the performance of this contract or any options exercised thereto by the Agency. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from the Agency upon written request for such from the contractor.

14.2 **Order of Precedence.** Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within the body of this contract shall take first precedence, then the requirement(s) detailed within each appendix shall take precedence in the order that they are listed above (meaning, the requirement(s) detailed within the lower listed item may not overrule any requirement(s) detailed within a higher listed item).

- 14.0 CERTIFICATIONS.** The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

Ballard Spahr, LLP

By: _____ **Date:** _____

Teri M. Guarnaccia, Partner

Fresno Housing Authority:

By: _____ **Date:** _____

Preston Prince, CEO/Executive Director

BOARD MEMO

O (559) 443-8400
F (559) 445-8981

1331 Fulton Mall
Fresno, California 93721
TTY (800) 735-2929

www.fresnohousing.org

TO: Boards of Commissioners

Fresno Housing Authority

FROM: Preston Prince 
CEO/Executive Director

DATE: December 13, 2018

BOARD MEETING: December 18, 2018

AGENDA ITEM: 8g

AUTHOR: Emily De La Guerra

SUBJECT: Consideration of Contract for Unlawful Detainer Legal Services

Executive Summary

The purpose of this memo is to request approval from the Boards of Commissioners to enter into a contract with Steven R. Hrdlicka, Attorney at Law, and Baker, Manock, and Jensen PC for Unlawful Detainer Legal Services. The term of each contract is January 1, 2019 to December 31, 2019, with the option to renew the contract for four (4) additional, one-year terms for a total potential contract period of five years. The Agency feels it is advantageous to have two separate contracts for Unlawful Detainers given the specific technical capabilities and experience of each firm, and the overall needs of the organization.

Fiscal Impact

Based on an independent cost estimate and the projected needs of the organization, the contract with Steven R. Hrdlicka, Attorney at Law includes an annual not to exceed amount of \$50,000. The contract with Baker, Manock, and Jensen PC includes an annual amount not to exceed \$25,000. The 2019 Agency Operations and Mixed Finance Budgets include funding for this contract.

Recommendation

It is recommended that the Boards of Commissioners authorize the CEO/Executive Director to negotiate and execute the contracts with Steven R. Hrdlicka, Attorney at Law, and Baker, Manock, and Jensen PC, each for a term of January 1, 2019 to December 31, 2019 for an amount not to exceed \$50,000 and \$25,000, respectively.

Background Information

In June 2018, the Agency published a Request for Proposals (RFP) to solicit for a variety of legal services. As a result of the RFP, the Agency received proposals from seven legal firms (both local and national) for Unlawful Detainer Legal Services. After proposals were evaluated by a team of Agency staff from a variety of departments, staff conducted interviews with the two firms determined to be in a competitive scoring range. Final scoring was completed after the interview process and both Steven R. Hrdlicka, Attorney at Law & Baker, Manock, and Jensen PC were determined to be the highest scoring proposers based on the

published evaluation factors. As such, the Agency is requesting approval from the Boards of Commissioners to enter into a contract with Steven R. Hrdlicka, Attorney at Law, and Baker, Manock, and Jensen PC for Unlawful Detainer Legal Services.

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE

HOUSING AUTHORITY OF THE CITY OF FRESNO

RESOLUTION APPROVING THE CONTRACT FOR UNLAWFUL DETAINER LEGAL SERVICES

WHEREAS, the Housing Authority of the City of Fresno (the "Agency") has solicited proposals from qualified law firms relating to unlawful detainer legal services; and

WHEREAS, Baker, Manock, & Jensen PC and Steven R. Hrdlicka, Attorney at Law, were responsive and responsible firms who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into contracts with Baker, Manock, & Jensen PC and Steven R. Hrdlicka, Attorney at Law, for unlawful detainer legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$25,000 and \$50,000 respectively; and

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of the City of Fresno do hereby authorize Preston Prince, Executive Director/CEO, or his designee, to negotiate the contract for unlawful detainer legal services with Baker, Manock, & Jensen PC and Steven R. Hrdlicka, Attorney at Law, and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE COUNTY OF FRESNO

RESOLUTION APPROVING THE CONTRACT FOR UNLAWFUL DETAINER LEGAL
SERVICES

WHEREAS, the Housing Authority of the Fresno County (the "Agency") has solicited proposals from qualified law firms relating to unlawful detainer legal services; and

WHEREAS, Baker, Manock, & Jensen PC and Steven R. Hrdlicka, Attorney at Law, were responsive and responsible firms who provided qualifications and prices that are the most advantageous to the Agency, pursuant to the procurement guidelines of the U.S. Dept. of Housing and Urban Development (HUD); and

WHEREAS, the Agency desires to enter into contracts with Baker, Manock, & Jensen PC and Steven R. Hrdlicka, Attorney at Law, for unlawful detainer legal services for one year, beginning January 1, 2019, for an annual amount not to exceed \$25,000 and \$50,000 respectively; and

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Housing Authority of Fresno County do hereby authorize Preston Prince, Executive Director/CEO, or his designee, to negotiate the contract for general legal services with Baker, Manock, & Jensen PC and Steven R. Hrdlicka, Attorney at Law, and execute all documents in connection therewith.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER, 2018. I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the governing body with the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Preston Prince, Secretary of the Boards of Commissioners

INTRODUCTION

This contract by and between the Fresno Housing Authority (hereinafter “the Agency”), and **Steven R. Hrdlicka, Attorney at Law** (hereinafter “the Contractor”) is hereby entered into this __ day of January, 2019.

Services pursuant to this contract shall begin on **the 1st day of January, 2019, and shall end on the 31st day of December, 2019**, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to “days” shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day). Also, whenever the term “herein” is referred to, such refers to this contract form, the appendices and all listed attachments.

1.0 Definitions.

- 1.1 **Fresno Housing Authority (“the Agency”).** Any reference herein or within any Appendix to the “Fresno Housing Authority” shall be interpreted to mean the same as the Agency.
- 1.2 **Contracting Officer (CO).** The Agency’s Contracting Officer, typically the Executive Director, but may be another person delegated such authority by the ED.
- 1.3 **Executive Director (ED).** The Agency’s Executive Director/Chief Executive Officer.
- 1.4 **Request For Proposals (RFP).** A competitive solicitation process conducted by the Agency wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment.

- 2.1 **Scope of Services.** The services provided pursuant to this contract generally consist of those services for the Agency as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the Agency at the designated Agency facilities. In addition, the Agency shall retain the right to implement and/or enforce any item issued as a part of RFP No. P18001.

2.2 Use of Services. The Agency reserves the right to use other or additional contractors for unlawful detainer legal services when a conflict prevents the Contractor from performing the service or for any reason determined by the Agency.

2.3 Cost/Value of Services.

2.3.1 Contract Value. The Not-To-Exceed (NTE) value of this contract's first term (1/1/19 – 12/31/19) is:

\$50,000.00

The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order.

2.3 Renewal Options. This contract is initially executed for the period of one (1) year with the option, at the Agency's discretion, of four (4) additional one-year option periods, for a maximum total of five (5) years. The contract value of each one-year option will be determined by the Agency at the beginning of each term, based on that year's anticipated needs.

2.4 Time Performance. The Contractor will complete each assigned task as assigned by the Agency.

2.5 Billing Method.

2.6.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:

**Fresno Housing Authority
Attention: Tiffany Mangum
1331 Fulton Street, Fresno, California 93721**

2.6.2 At a minimum, the invoice shall detail the following information:

2.6.2.1 Unique invoice number;

2.6.2.2 Contractor's name, address and telephone number;

2.6.2.3 Date of invoice and/or billing period;

2.6.2.4 Applicable Contract No. (C18026);

2.6.2.5 Applicable Purchase Order No. Issued by the Agency (If applicable);

2.6.2.6 Brief description of services rendered, including applicable time frame, total hours being billed for each service, and at the approved rate (may be submitted in the form of a report);

2.6.2.7 Task Order (if applicable), approved by the Agency's Executive Director or authorized representative; and

2.6.2.8 Total dollar amount being billed.

2.6.3 The Agency will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

3.0 Agency's Obligations. Pursuant to this contract, the Agency agrees to provide the specific services detailed herein and also shall be responsible for the following:

3.1 The Agency agrees to not provide to the Contractor any Task Order assigning work to the Contractor without the prior written approval of an authorized Agency representative.

4.0 Contractor's Obligations. Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

4.1 Supervision and Oversight. The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the Agency pursuant to this contract.

- 4.2 Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term “qualified personnel” shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor’s normal conduct of business.
- 4.3 Compliance with Federal and State Laws:** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 4.4 Confidentiality.** The Contractor, in connection with performing services hereunder, will have access to or may be provided certain confidential information concerning the Agency and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Agency or any other information which a reasonable person could conclude that should remain confidential (collectively Confidential Information), will not be disclosed to any party and without limitation, any employee of the Agency or any client or potential client of the Agency at any time, except for the Contractor’s legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Contractor acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Contractor further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Agency. The Agency will have the right to enforce this Contract by specific performance, as well as hold the Contractor liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent. The Contractor agrees that it has received valuable consideration for the entering into of this Contract and agrees to be bound all of its terms and conditions. This Contract will be binding on the Contractor and any attorney, accountant, financial advisor who also may be provided Confidential Information.

4.5 Insurance Requirements.

- 4.5.1 Insurances.** In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

- 4.5.1.1 General Liability Insurance.** Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to premises and fire damage of \$50,000 and medical expenses for any one person of \$5,000 with a deductible not greater than \$1,000. The Agency shall be named upon the certificate issued as an "additional insured," together with providing a copy of the corresponding endorsement evidencing the same.
- 4.5.1.2 Professional Liability Insurance.** Policy of Professional Liability Insurance or Errors & Omissions coverage, minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000 with a deductible of not greater than \$1,000;
- 4.5.1.3 Automobile Liability Insurance.** Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000.
- 4.5.1.4 Worker's Compensation Insurance.** Worker's compensation coverage evidencing carrier and coverage amount.
- 4.5.1.5 Certificates and Endorsements.** The Contractor shall provide to the Agency with current certificate(s) and endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) and endorsement(s) shall be delivered to the following person representing the Agency:

Fresno Housing Authority

Attn: Emily De La Guerra, Director of Finance & Administrative Services

1331 Fulton Street, Fresno, California 93721

4.5 Licensing. The Contractor shall also provide to the Agency a copy of the required local Business Tax License. Failure to maintain this license in a current status during the term(s) of this contract shall constitute a material breach thereof.

4.6 Financial Viability and Regulatory Compliance.

4.6.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.

4.6.2 The Contractor agrees to promptly disclose to the Agency any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the Agency in writing within five (5) days of such notification received will constitute a material breach of this contract.

4.6.3 The Contractor further agrees to promptly disclose to the Agency any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this contract.

4.6.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to the Agency within the time periods required herein.

5.0 Modification. This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties.

6.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

7.0 Applicable Laws.

7.1 Compliance with Federal and State Laws. All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

7.2 Jurisdiction of Law. The laws of the State of California shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Fresno County, California is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

8.0 Notices and Reports.

8.1 All notices and/or reports submitted to the Agency by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the Agency:

Fresno Housing Authority
Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721

8.2 All notices submitted to the Contractor pursuant to this contract shall be in writing and mailed to the attention of:

Steven R. Hrdlicka Attorney at Law
Attn: Steven R. Hrdlicka
1221 Van Ness, 2nd Floor, Fresno, CA 93721

9.0 Disputed Billings (Charges).

9.1 Procedures: In addition to the procedures detailed within Clause No. 7 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-*

Construction Contracts, Section I—(With or without Maintenance Work), in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

- 9.1.1** The Agency's representative shall, within ten (10) days after the Agency's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
- 9.1.2** If such dispute cannot be resolved by the contractor's response, within ten (10) days after such notification is given, the CO and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 9.1.3** If the CO and the contractor's representative are unable to resolve the dispute through such discussion within ten (10) days, the Agency shall, within ten (10) days thereafter, either:
 - 9.1.3.1** Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of California;
 - 9.1.3.2** Not pay the disputed charge and submit the matter to the appropriate district court in the State of California;
 - 9.1.3.3** Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of California.
- 9.1.4** The decision from arbitration will be binding upon both parties. If the decision is adverse to the Agency, the Agency shall pay the Agency's receipt of the decision. If the decision is in favor of the Agency, the contractor will either:
 - 9.1.4.1** Clear the amount which is ordered from the Agency account; or
 - 9.1.4.2** Repay to the Agency the amount ordered;

Either option shall be completed within ten (10) days after the contractor's receipt of the arbitrator's decision.

- 10.0 Binding Arbitration/Dispute Resolution.** Any and all (material and non-material) disputes or controversies between the parties hereto involving either: (1) the construction or application of any of the terms, covenants or conditions of this Agreement or (2) otherwise arising in any respect with regard to this Agreement, or (3) relating to, arising out of, or resulting from either this Agreement, the performance of this Agreement, or the lack of performance of this Agreement, and/or (4) in any other manner relating to or involving this Agreement, shall not be litigated in any federal or state court or before any state, federal or administrative agency, but rather shall upon written request of one party served on the other be submitted and shall be solely and exclusively resolved by "final and binding" arbitration before a neutral retired Judge, which arbitration shall comply with and be governed by the provisions of the California Arbitration Act (CCP §§1280, et seq.) This Arbitration Agreement constitutes a waiver of any right to a jury trial; and it also waives any right to proceed before any federal or state court or any federal or state administrative agency with regard to the disputes resolution. Said waivers are agreed to because the parties hereto prefer neutral and binding arbitration over any other means of dispute resolution. The neutral (retired Judge) arbitrator shall be mutually agreed upon by the parties; if such an Agreement is not promptly forthcoming, then the retired Judge to serve as arbitrator shall be selected by the Superior Court in accordance with the California Arbitration Act. The Arbitration hearing shall be conducted before a Certified Court Reporter and shall take place in the County of Fresno unless otherwise agreed by both parties. The hearing before the arbitrator of the matters to be arbitrated shall be at a time and place within the County of Fresno as selected by the Arbitrator. The Arbitrator shall select such time and place promptly after his/her appointment, and the arbitrator shall give written notice thereof to each party at least thirty days prior to the date so fixed. The arbitrator shall follow California substantive and procedural law; except only at the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings (in the sole discretion of the arbitrator) need not govern, so that evidence may be admitted or excluded in the discretion of the arbitrator as long as it is trustworthy. The arbitrator shall hear and determine the matter and shall execute and acknowledge the award in writing explaining the basis for his/her ruling. The Arbitrator shall cause a copy of the award to be delivered to each of the parties within twenty (20) calendar days after the conclusion of the evidentiary hearing, unless otherwise agreed by the parties. Said award shall follow California substantive and procedural law. All the arbitrators' fees and all of the certified court reporter's fees (for daily attendance and for providing the arbitrator with the original transcript) shall be shared equally (50/50) by the parties; and all the parties shall bear their own legal fees and their own litigation costs and expenses.

- 10.1 Breach.** Notwithstanding the foregoing, it is hereby agreed and understood that, in the event that if a party to this Agreement breaches or threatens to breach this Agreement, then the other party to the Agreement may seek and obtain an injunction and/or any other equitable relief necessary from a state or federal court of competent jurisdiction, so as to order the continuance of the party's performance under this Agreement, pending the results of the aforementioned arbitration proceeding.
- 10.2 Mediation.** Further, notwithstanding the foregoing, it is agreed that prior to appearing before and conducting the aforementioned binding arbitration hearing, the parties shall engage in a fully privileged and confidential Mediation before a neutral retired Judge. The Mediator retired Judge shall be a different person from the arbitrator retired Judge unless the parties stipulate otherwise. The Mediator shall be mutually selected by the parties; however, if they are unable to agree, then the Mediator shall be selected by the arbitrator. The Mediator's fees and costs shall be shared equally by the parties. Communications during the Mediation process shall remain confidential and barred from introduction into evidence at the arbitration pursuant to the provisions of California Evidence Code §§ 1152 and 1119 and Fed. Rules of Evidence, Rule 408.
- 10.3 Petition to Compel Arbitration, and/or Petition To Enforce The Arbitrator's Award.** Notwithstanding anything herein to the contrary, if either party to this Agreement brings any court action or proceeding to either compel arbitration or to enforce an arbitration award, then the prevailing party shall be entitled to recover reasonable attorneys' fees as well as costs and expenses. The arbitration process itself is not an action or proceeding for purposes of this Agreement.
- 11.0 24 CFR 85.36(i), Procurement.** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the Agency and the Contractor each agree to comply with the following provisions:
- 11.1 Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within ten (10) days, respond in

writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

- 11.1.1** If the contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.
- 11.1.2** Prior to termination, the Agency may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.3** After termination, if the contractor does not agree with the Agency's justification for the termination, the contractor shall have ten (10) days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

- 11.2 Termination For Cause and Convenience.** Notwithstanding any other provision of this Contract, the parties agree that the Agency may terminate this agreement at any time, in its sole and absolute discretion, by delivering written notice to the Contractor. In such event, Contractor shall only be paid for the services actually performed to the date of such written notice.
- 11.3 Reporting.** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 11.4 Patent Rights.** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 11.5 Copy Rights/Rights in Data.** In addition to the requirements contained within Clause No. 5 of *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the Agency has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
- 11.5.1** Except as provided elsewhere in this clause, the Agency shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.
- 11.5.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting

in data first produced in the performance of this contract to the extent provided below.

- 11.5.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the Agency and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the Agency.
- 11.5.4** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the Agency a license of the same scope as identified in the preceding paragraph.
- 11.5.5** The Agency agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Agency may either return the data to the contractor, or cancel or ignore the markings.
- 11.5.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 11.5.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the Agency shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

- 11.5.8** The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the Agency except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any Agency location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.
- 11.6 Access to Records.** Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 11.7 Record Retention.** Both parties hereby guarantee retention of all required records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.
- 11.8 Energy Policy and Conservation Act.** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 11.9 Executive Order 11246.** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

- 11.10 Copeland “Anti-Kickback” Act.** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 11.11 Davis-Bacon-Act.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.12 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.13 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12.0 Additional Considerations.

- 12.1 Non-Escalation.** Unless otherwise specified within the contract documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 12.2 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:
- 12.2.1** Funding is not available;
- 12.2.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

12.2.3 The Agency's requirements in good faith change after award of the contract.

12.3 Local, State, and/or Federal Permits. Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the Agency or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor, and any costs required by the Contractor to procure and provide such necessary permits.

12.4 Government Standards. It is the responsibility of the proposer to ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Fresno Pollution Regulations) and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

12.5 Freight on Bill and Delivery. All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.

12.5.1 The Contractor agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

12.6 Backorders.

12.6.1 The CO must be notified in writing by the contractor within 10 days of any and all backordered materials and/or any incomplete services; and the estimated delivery date.

12.6.2 Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon delivery date, may at the option of the Agency, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the Agency to do so.

- 12.7 Work on Agency Property.** If the Contractor's work under the contract involves operations by the Contractor on Agency premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.
- 12.8 Official, Agent and Employees of the Agency Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 12.9 Subcontractors.** Unless otherwise stated within the contract documents, the Contractor may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 12.10 Salaries and Expenses Relating to the Contractors Employees.** Unless otherwise stated within the RFP documents, the Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 12.11 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 12.12 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.

12.13 Waiver of Breach. A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

12.14 Time of the Essence. Time is of the essence under this agreement as to each provision in which time of performance is a factor.

12.15 Limitation of Liability. In no event shall the Agency be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

12.16 Indemnification.

12.16.1 The Contractor shall indemnify, defend, and hold the Agency (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arising out of, or occurring due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this Contract, (3) comply with the "California Industrial Insurance Act," or any other similar law, ordinance, or decree; or (4) ensure that the any subcontractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the Agency against any loss or damage which was specifically caused by the Agency providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.

12.16.2 In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the Agency, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the Agency. If the Contractor shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and

incidental costs of such defense to the Contractor including attorney's fees and court costs.

12.16.3 Any money due to the Contractor under and by virtue of this contract, which the Agency believes must be withheld from the Contractor to protect the Agency, may be retained by the Agency so long as it is reasonably necessary to ensure the Agency's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the Agency provided, however, neither the Contractor's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the Agency from any potential claims.

12.16.4 The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

12.0 Lobbying Certification. By execution of this contract with the Agency the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

12.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in an accordance with its instructions.

- 12.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 12.4 Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives, where applicable:
- 12.4.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 12.4.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 12.4.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.4.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 12.4.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 12.4.6** HUD Information Bulletin 909-23 which is the following:

12.4.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;

12.4.6.2 Clean Air and Water Certification; and,

12.4.6.3 Energy Policy and Conservation Act.

12.4.7 That the funds that are provided by the Agency and HUD hereunder shall not be used, directly or indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or ineligible Contractor.

12.4.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.

12.4.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

13.0 Section 3 Clause. As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are hereby included as a part of this contract.

13.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- 13.2** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 13.3** The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 13.4** The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 13.5** The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- 13.6** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 13.7** With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and

opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14.0 Appendices.

14.1 The following noted documents are placed under each of the noted appendix and are a part of this contract:

14.1.1 **Appendix No. 1.** form HUD-5370-C (10/2006), *General Condition for Non-Construction Contracts, Section I—(With or without Maintenance Work)*;

14.1.2 **Appendix No. 2.** Scope of Services, as covered in RFP P18001;

14.1.3 **Appendix No. 3.** The proposed fee(s) submitted by this contractor in response to the RFP, or any negotiated fee(s) that resulted thereto, which fee(s) shall apply to each procurement that ensues from this contract.

14.1.5 **Inclusion by Reference.** Included by reference is any document or clause issued as a part of RFP No. P18001 that the Agency may choose to include at any time during the performance of this contract or any options exercised thereto by the Agency. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from the Agency upon written request for such from the contractor.

14.2 **Order of Precedence.** Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within the body of this contract shall take first precedence, then the requirement(s) detailed within each appendix shall take precedence in the order that they are listed above (meaning, the requirement(s) detailed within the lower listed item may not overrule any requirement(s) detailed within a higher listed item).

- 14.0 CERTIFICATIONS.** The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

Steven R. Hrdlicka, Attorney at Law

By: _____ **Date:** _____

Steven R. Hrdlicka

Fresno Housing Authority:

By: _____ **Date:** _____

Preston Prince, CEO/Executive Director

INTRODUCTION

This contract by and between the Fresno Housing Authority (hereinafter “the Agency”), and **Baker Manock & Jensen, PC**, a California professional corporation (hereinafter “the Contractor”) is hereby entered into this **day of January, 2019**.

Services pursuant to this contract shall begin on **the 1st day of January, 2019, and shall end on the 31st day of December, 2019**, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to “days” shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day). Also, whenever the term “herein” is referred to, such refers to this contract form, the appendices and all listed attachments.

1.0 Definitions.

- 1.1 **Fresno Housing Authority (“the Agency”).** Any reference herein or within any Appendix to the “Fresno Housing Authority” shall be interpreted to mean the same as the Agency.
- 1.2 **Contracting Officer (CO).** The Agency’s Contracting Officer, typically the Executive Director, but may be another person delegated such authority by the ED.
- 1.3 **Executive Director (ED).** The Agency’s Executive Director/Chief Executive Officer.
- 1.4 **Request For Proposals (RFP).** A competitive solicitation process conducted by the Agency wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment.

- 2.1 **Scope of Services.** The services provided pursuant to this contract generally consist of those services for the Agency as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the Agency at the designated Agency facilities. In addition, the Agency shall retain the right to implement and/or enforce any item issued as a part of RFP No. P18001.

2.2 Use of Services. The Agency reserves the right to use other or additional contractors for unlawful detainer legal services when a conflict prevents the Contractor from performing the service or for any reason determined by the Agency.

2.3 Cost/Value of Services.

2.3.1 Contract Value. The Not-To-Exceed (NTE) value of this contract's first term (1/1/19 – 12/31/19) is:

\$25,000.00

The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order.

2.3 Renewal Options. This contract is initially executed for the period of one (1) year with the option, at the Agency's discretion, of four (4) additional one-year option periods, for a maximum total of five (5) years. The contract value of each one-year option will be determined by the Agency at the beginning of each term, based on that year's anticipated needs.

2.4 Time Performance. The Contractor will complete each assigned task as assigned by the Agency.

2.5 Billing Method.

2.6.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:

**Fresno Housing Authority
Attention: Tiffany Mangum
1331 Fulton Street, Fresno, California 93721**

2.6.2 At a minimum, the invoice shall detail the following information:

2.6.2.1 Unique invoice number;

2.6.2.2 Contractor's name, address and telephone number;

2.6.2.3 Date of invoice and/or billing period;

2.6.2.4 Applicable Contract No. (C18027);

2.6.2.5 Applicable Purchase Order No. Issued by the Agency (If applicable);

2.6.2.6 Brief description of services rendered, including applicable time frame, total hours being billed for each service, and at the approved rate (may be submitted in the form of a report);

2.6.2.7 Task Order (if applicable), approved by the Agency's Executive Director or authorized representative; and

2.6.2.8 Total dollar amount being billed.

2.6.3 The Agency will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

3.0 Agency's Obligations. Pursuant to this contract, the Agency agrees to provide the specific services detailed herein and also shall be responsible for the following:

3.1 The Agency agrees to not provide to the Contractor any Task Order assigning work to the Contractor without the prior written approval of an authorized Agency representative.

4.0 Contractor's Obligations. Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

4.1 Supervision and Oversight. The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the Agency pursuant to this contract.

- 4.2 Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term “qualified personnel” shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor’s normal conduct of business.
- 4.3 Compliance with Federal and State Laws:** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 4.4 Confidentiality.** The Contractor, in connection with performing services hereunder, will have access to or may be provided certain confidential information concerning the Agency and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Agency or any other information which a reasonable person could conclude that should remain confidential (collectively Confidential Information), will not be disclosed to any party and without limitation, any employee of the Agency or any client or potential client of the Agency at any time, except for the Contractor’s legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Contractor acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Contractor further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Agency. The Agency will have the right to enforce this Contract by specific performance, as well as hold the Contractor liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent. The Contractor agrees that it has received valuable consideration for the entering into of this Contract and agrees to be bound all of its terms and conditions. This Contract will be binding on the Contractor and any attorney, accountant, financial advisor who also may be provided Confidential Information.

4.5 Insurance Requirements.

- 4.5.1 Insurances.** In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

- 4.5.1.1 General Liability Insurance.** Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to premises and fire damage of \$50,000 and medical expenses for any one person of \$5,000 with a deductible not greater than \$1,000. The Agency shall be named upon the certificate issued as an "additional insured," together with providing a copy of the corresponding endorsement evidencing the same.
- 4.5.1.2 Professional Liability Insurance.** Policy of Professional Liability Insurance or Errors & Omissions coverage, minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000 with a deductible of not greater than \$1,000;
- 4.5.1.3 Automobile Liability Insurance.** Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000.
- 4.5.1.4 Worker's Compensation Insurance.** Worker's compensation coverage evidencing carrier and coverage amount.
- 4.5.1.5 Certificates and Endorsements.** The Contractor shall provide to the Agency with current certificate(s) and endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) and endorsement(s) shall be delivered to the following person representing the Agency:

Fresno Housing Authority

Attn: Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721

4.5 Licensing. The Contractor shall also provide to the Agency a copy of the required local Business Tax License. Failure to maintain this license in a current status during the term(s) of this contract shall constitute a material breach thereof.

4.6 Financial Viability and Regulatory Compliance.

4.6.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.

4.6.2 The Contractor agrees to promptly disclose to the Agency any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the Agency in writing within five (5) days of such notification received will constitute a material breach of this contract.

4.6.3 The Contractor further agrees to promptly disclose to the Agency any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within five (5) days of said actions shall constitute a material breach of this contract.

4.6.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to the Agency within the time periods required herein.

5.0 Modification. This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties.

6.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

7.0 Applicable Laws.

7.1 Compliance with Federal and State Laws. All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

7.2 Jurisdiction of Law. The laws of the State of California shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Fresno County, California is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

8.0 Notices and Reports.

8.1 All notices and/or reports submitted to the Agency by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the Agency:

Fresno Housing Authority
Emily De La Guerra, Director of Finance & Administrative Services
1331 Fulton Street, Fresno, California 93721

8.2 All notices submitted to the Contractor pursuant to this contract shall be in writing and mailed to the attention of:

Baker Manock & Jensen, PC
Attn: Kenneth J. Price
5260 North Palm Avenue, Suite 421, Fresno, Ca 93740

9.0 Disputed Billings (Charges).

9.1 Procedures: In addition to the procedures detailed within Clause No. 7 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-*

Construction Contracts, Section I—(With or without Maintenance Work), in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

- 9.1.1** The Agency's representative shall, within ten (10) days after the Agency's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
- 9.1.2** If such dispute cannot be resolved by the contractor's response, within ten (10) days after such notification is given, the CO and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 9.1.3** If the CO and the contractor's representative are unable to resolve the dispute through such discussion within ten (10) days, the Agency shall, within ten (10) days thereafter, either:
 - 9.1.3.1** Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of California;
 - 9.1.3.2** Not pay the disputed charge and submit the matter to the appropriate district court in the State of California;
 - 9.1.3.3** Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of California.
- 9.1.4** The decision from arbitration will be binding upon both parties. If the decision is adverse to the Agency, the Agency shall pay the Agency's receipt of the decision. If the decision is in favor of the Agency, the contractor will either:
 - 9.1.4.1** Clear the amount which is ordered from the Agency account; or
 - 9.1.4.2** Repay to the Agency the amount ordered;

Either option shall be completed within ten (10) days after the contractor's receipt of the arbitrator's decision.

- 10.0 Binding Arbitration/Dispute Resolution.** Any and all (material and non-material) disputes or controversies between the parties hereto involving either: (1) the construction or application of any of the terms, covenants or conditions of this Agreement or (2) otherwise arising in any respect with regard to this Agreement, or (3) relating to, arising out of, or resulting from either this Agreement, the performance of this Agreement, or the lack of performance of this Agreement, and/or (4) in any other manner relating to or involving this Agreement, shall not be litigated in any federal or state court or before any state, federal or administrative agency, but rather shall upon written request of one party served on the other be submitted and shall be solely and exclusively resolved by "final and binding" arbitration before a neutral retired Judge, which arbitration shall comply with and be governed by the provisions of the California Arbitration Act (CCP §§1280, et seq.) This Arbitration Agreement constitutes a waiver of any right to a jury trial; and it also waives any right to proceed before any federal or state court or any federal or state administrative agency with regard to the disputes resolution. Said waivers are agreed to because the parties hereto prefer neutral and binding arbitration over any other means of dispute resolution. The neutral (retired Judge) arbitrator shall be mutually agreed upon by the parties; if such an Agreement is not promptly forthcoming, then the retired Judge to serve as arbitrator shall be selected by the Superior Court in accordance with the California Arbitration Act. The Arbitration hearing shall be conducted before a Certified Court Reporter and shall take place in the County of Fresno unless otherwise agreed by both parties. The hearing before the arbitrator of the matters to be arbitrated shall be at a time and place within the County of Fresno as selected by the Arbitrator. The Arbitrator shall select such time and place promptly after his/her appointment, and the arbitrator shall give written notice thereof to each party at least thirty days prior to the date so fixed. The arbitrator shall follow California substantive and procedural law; except only at the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings (in the sole discretion of the arbitrator) need not govern, so that evidence may be admitted or excluded in the discretion of the arbitrator as long as it is trustworthy. The arbitrator shall hear and determine the matter and shall execute and acknowledge the award in writing explaining the basis for his/her ruling. The Arbitrator shall cause a copy of the award to be delivered to each of the parties within twenty (20) calendar days after the conclusion of the evidentiary hearing, unless otherwise agreed by the parties. Said award shall follow California substantive and procedural law. All the arbitrators' fees and all of the certified court reporter's fees (for daily attendance and for providing the arbitrator with the original transcript) shall be shared equally (50/50) by the parties; and all the parties shall bear their own legal fees and their own litigation costs and expenses.

- 10.1 Breach.** Notwithstanding the foregoing, it is hereby agreed and understood that, in the event that if a party to this Agreement breaches or threatens to breach this Agreement, then the other party to the Agreement may seek and obtain an injunction and/or any other equitable relief necessary from a state or federal court of competent jurisdiction, so as to order the continuance of the party's performance under this Agreement, pending the results of the aforementioned arbitration proceeding.
- 10.2 Mediation.** Further, notwithstanding the foregoing, it is agreed that prior to appearing before and conducting the aforementioned binding arbitration hearing, the parties shall engage in a fully privileged and confidential Mediation before a neutral retired Judge. The Mediator retired Judge shall be a different person from the arbitrator retired Judge unless the parties stipulate otherwise. The Mediator shall be mutually selected by the parties; however, if they are unable to agree, then the Mediator shall be selected by the arbitrator. The Mediator's fees and costs shall be shared equally by the parties. Communications during the Mediation process shall remain confidential and barred from introduction into evidence at the arbitration pursuant to the provisions of California Evidence Code §§ 1152 and 1119 and Fed. Rules of Evidence, Rule 408.
- 10.3 Petition to Compel Arbitration, and/or Petition To Enforce The Arbitrator's Award.** Notwithstanding anything herein to the contrary, if either party to this Agreement brings any court action or proceeding to either compel arbitration or to enforce an arbitration award, then the prevailing party shall be entitled to recover reasonable attorneys' fees as well as costs and expenses. The arbitration process itself is not an action or proceeding for purposes of this Agreement.
- 11.0 24 CFR 85.36(i), Procurement.** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the Agency and the Contractor each agree to comply with the following provisions:
- 11.1 Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within ten (10) days, respond in

writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

- 11.1.1** If the contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.
- 11.1.2** Prior to termination, the Agency may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have ten (10) days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.3** After termination, if the contractor does not agree with the Agency's justification for the termination, the contractor shall have ten (10) days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 11.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

- 11.2 Termination For Cause and Convenience.** Notwithstanding any other provision of this Contract, the parties agree that the Agency may terminate this agreement at any time, in its sole and absolute discretion, by delivering written notice to the Contractor. In such event, Contractor shall only be paid for the services actually performed to the date of such written notice.
- 11.3 Reporting.** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 11.4 Patent Rights.** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 11.5 Copy Rights/Rights in Data.** In addition to the requirements contained within Clause No. 5 of *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the Agency has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
- 11.5.1** Except as provided elsewhere in this clause, the Agency shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.
- 11.5.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting

in data first produced in the performance of this contract to the extent provided below.

- 11.5.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the Agency and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the Agency.
- 11.5.4** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the Agency a license of the same scope as identified in the preceding paragraph.
- 11.5.5** The Agency agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Agency may either return the data to the contractor, or cancel or ignore the markings.
- 11.5.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 11.5.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the Agency shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

- 11.5.8** The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the Agency except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any Agency location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.
- 11.6 Access to Records.** Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 11.7 Record Retention.** Both parties hereby guarantee retention of all required records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.
- 11.8 Energy Policy and Conservation Act.** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 11.9 Executive Order 11246.** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

- 11.10 Copeland “Anti-Kickback” Act.** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 11.11 Davis-Bacon-Act.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.12 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 11.13 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12.0 Additional Considerations.

- 12.1 Non-Escalation.** Unless otherwise specified within the contract documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 12.2 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:
- 12.2.1** Funding is not available;
- 12.2.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

12.2.3 The Agency's requirements in good faith change after award of the contract.

12.3 Local, State, and/or Federal Permits. Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the Agency or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor, and any costs required by the Contractor to procure and provide such necessary permits.

12.4 Government Standards. It is the responsibility of the proposer to ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Fresno Pollution Regulations) and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

12.5 Freight on Bill and Delivery. All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.

12.5.1 The Contractor agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

12.6 Backorders.

12.6.1 The CO must be notified in writing by the contractor within 10 days of any and all backordered materials and/or any incomplete services; and the estimated delivery date.

12.6.2 Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon delivery date, may at the option of the Agency, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the Agency to do so.

- 12.7 Work on Agency Property.** If the Contractor's work under the contract involves operations by the Contractor on Agency premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.
- 12.8 Official, Agent and Employees of the Agency Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 12.9 Subcontractors.** Unless otherwise stated within the contract documents, the Contractor may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the CO.
- 12.10 Salaries and Expenses Relating to the Contractors Employees.** Unless otherwise stated within the RFP documents, the Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 12.11 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 12.12 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.

12.13 Waiver of Breach. A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

12.14 Time of the Essence. Time is of the essence under this agreement as to each provision in which time of performance is a factor.

12.15 Limitation of Liability. In no event shall the Agency be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

12.16 Indemnification.

12.16.1 The Contractor shall indemnify, defend, and hold the Agency (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arising out of, or occurring due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this Contract, (3) comply with the "California Industrial Insurance Act," or any other similar law, ordinance, or decree; or (4) ensure that the any subcontractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the Agency against any loss or damage which was specifically caused by the Agency providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any recommendation of the Contractor.

12.16.2 In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the Agency, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the Agency. If the Contractor shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and

incidental costs of such defense to the Contractor including attorney's fees and court costs.

12.16.3 Any money due to the Contractor under and by virtue of this contract, which the Agency believes must be withheld from the Contractor to protect the Agency, may be retained by the Agency so long as it is reasonably necessary to ensure the Agency's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the Agency provided, however, neither the Contractor's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the Agency from any potential claims.

12.16.4 The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

12.0 Lobbying Certification. By execution of this contract with the Agency the Contractor thereby certifies, to the best of his or her knowledge and belief, that:

12.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in an accordance with its instructions.

- 12.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 12.4 Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives, where applicable:
- 12.4.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 12.4.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 12.4.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.4.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 12.4.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 12.4.6** HUD Information Bulletin 909-23 which is the following:

12.4.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;

12.4.6.2 Clean Air and Water Certification; and,

12.4.6.3 Energy Policy and Conservation Act.

12.4.7 That the funds that are provided by the Agency and HUD hereunder shall not be used, directly or indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or ineligible Contractor.

12.4.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.

12.4.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

13.0 Section 3 Clause. As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are hereby included as a part of this contract.

13.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- 13.2** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 13.3** The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 13.4** The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 13.5** The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- 13.6** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 13.7** With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and

opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14.0 Appendices.

14.1 The following noted documents are placed under each of the noted appendix and are a part of this contract:

14.1.1 Appendix No. 1. form HUD-5370-C (10/2006), *General Condition for Non-Construction Contracts, Section I—(With or without Maintenance Work)*;

14.1.2 Appendix No. 2. Scope of Services, as covered in RFP P18001;

14.1.3 Appendix No. 3. The proposed fee(s) submitted by this contractor in response to the RFP, or any negotiated fee(s) that resulted thereto, which fee(s) shall apply to each procurement that ensues from this contract.

14.1.5 Inclusion by Reference. Included by reference is any document or clause issued as a part of RFP No. P18001 that the Agency may choose to include at any time during the performance of this contract or any options exercised thereto by the Agency. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from the Agency upon written request for such from the contractor.

14.2 Order of Precedence. Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within the body of this contract shall take first precedence, then the requirement(s) detailed within each appendix shall take precedence in the order that they are listed above (meaning, the requirement(s) detailed within the lower listed item may not overrule any requirement(s) detailed within a higher listed item).

- 14.0 CERTIFICATIONS.** The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

Baker Manock & Jensen, PC:

By: _____ **Date:** _____

Kenneth J. Price, Managing Shareholder

Fresno Housing Authority:

By: _____ **Date:** _____

Preston Prince, CEO/Executive Director

O (559) 443-8400
F (559) 445-8981

1331 Fulton Street
Fresno, California 93721
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EXECUTIVE DIRECTOR'S REPORT

TO: Boards of Commissioners	DATE: December 12, 2018
Fresno Housing Authority	BOARD MEETING: December 18, 2018
FROM: Preston Prince	AGENDA ITEM: 10
CEO/Executive Director	AUTHOR: Staff
SUBJECT: Directors Report- December 2018	

Executive Summary

The Boards of the Fresno Housing Authority have established the four strategic goals as: Place, People, Public, and Partnership. In addition, the following have been outlined as the management goals: Sustainability, Structure, and Strategic Outreach. The following report demonstrates the efforts of the Executive Leadership and Staff to progress towards the realization of these goals.

PLACE

Overview

Fresno Housing seeks to develop and expand the availability of quality affordable housing options throughout the City and County of Fresno by growing and preserving appropriate residential assets and increasing housing opportunities for low-income residents.

Effort in this area are ongoing and will be reported as outcomes are achieved.

PEOPLE

Overview

Fresno Housing works to respect community needs and knowledge – by listening, learning and researching – and respond to issues compassionately, intelligently, intentionally – by developing exceptional programs based on shared expectations.

Effort in this area are ongoing and will be reported as outcomes are achieved.

PUBLIC

Overview

Fresno Housing seeks to build support for housing as a key component of vibrant, sustainable communities through public information, engagement, and advocacy that promotes affordable housing and supports the advancement of Fresno's low-income residents.

Effort in this area are ongoing and will be reported as outcomes are achieved.

PARTNERSHIP

Overview

Fresno Housing seeks to collaborate to strengthen its ability to address the challenges facing Fresno communities.

Effort in this area are ongoing and will be reported as outcomes are achieved.

MANAGEMENT GOALS

The goals of management include our efforts to stabilize, focus, and extend activities to meet the mandate of our mission through good decision making related to Sustainability (staffing, finances, effectiveness, evaluation, technology, facilities); Structure (governance); and Strategic Outreach (communications, image, visibility, public affairs, policy).

Sustainability

Build and maintain an innovative, engaged, visible, and sustainable organization, committed to its mission of providing housing for low-income populations.

Human Resources

On October 25, 2018 Aysha Hills, Senior Analyst- Human Resources, attended the Total Internship Management Workshop hosted by Intern Bridge, Fresno State Career Development Center, and the Central California Society for Human Resource Management. The focus of this workshop was to provide useful tools to build and improve student internship programs.

The Training and Development team facilitated five De-Escalation trainings in November for selected staff members. The training was focused around prevention, de-escalation, and post-vention. Participants walked away with valuable ideas for their tool bag of client services.

The Human Resources Department had the pleasure of hosting an event for the law firm Liebert Cassidy Whitmore on November 7, 2018. These leadership development trainings extend to local government agencies in the Central Valley. There were 375 people from a variety of California public agencies in attendance throughout the day.

On Saturday, November 10th Senior HR Analyst Aysha Hills, Senior Database Administrator Cassie Morgan, and Human Resources Director Scott Fetterhoff attended the first annual BLOC (Black Leaders Organizing Change) Night of Elegance Gala. At the event, Fresno Housing was recognized as a key community partner in the development and leveraging of opportunities for Fresno's talent pipeline of future leaders.

December 4th through December 7th, Deputy Executive Director Tammy Townsend and Human Resources Director Scott Fetterhoff attended the annual CALPELRA (California Public Employers & Labor Relations Association) conference in Monterey. Value-added topics this year included the impact of philosophy, psychology and data on labor negotiations, life after the Supreme Court's Janus decision, and developing a continually improving organization.

The Agency's Open Enrollment for 2019 Benefits was held from November 26, 2018 through December 7, 2018. Benefits 101 Workshops were held in Fresno, Selma and Mendota facilitated by Human Resources and Barthuli & Associates, our Benefits Broker, to ensure all employees were provided an informational session regarding 2019 benefits. These workshops were well received. In addition to workshops, staff were given daily opportunities to sign up for one-on-one sessions with an Agency HR representative if they needed a little extra help with their online Open Enrollment.

The Human Resources Department is currently recruiting for positions within the Housing Choice, Housing Management, and Planning and Community Development Departments.

New Hires

- Fidel Ruz, Maintenance Technician
- Juan Lopez, Manager overseeing the analysis of fiscal program and policy impacts to the Agency

Promotions

- Steven Grijalva, Database Administrator & Report Writer
- Maria Garcia, Owner Services Specialist

Structure

Maintain a committed, active, community-based Boards of Commissioners.

Effort in this area are ongoing and will be reported as outcomes are achieved.

Strategic Outreach

Heighten agency visibility, facilitate community dialogue about housing solutions; and build support for the agency and quality affordable housing.

Effort in this area are ongoing and will be reported as outcomes are achieved.

Addendums

December 18, 2018

Fresno County Public Library *in partnership with* Fresno Housing Authority

Bringing the library to the community

Annika Janzen, Community Librarian

December 18, 2018



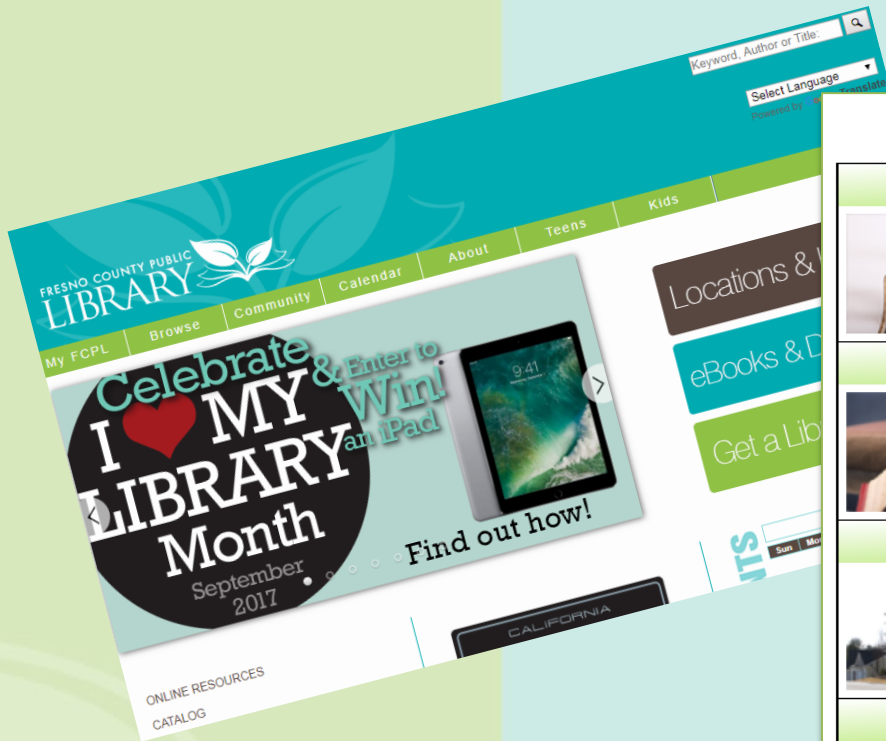
Library Card: Your Key to . . .

- Access to 37 branches
- Millions of books, movies, magazines
- Over 40,000 eBooks
- Access to more than 30 databases
- Access to public computers in library branches

Library Members

- Demographics
- Barriers to access
- What do members access the most?
- Computer literacy services

Online Resources



Subject Guide

Arts & Entertainment 	Citizenship Resources 	Consumer / Business & Finance 
Continuing Education 	Government & Law 	Health & Medicine 
Home & Auto 	Homework Help 	Jobs & Career 
Kid's Resources 	Languages 	News & Research 
Online Learning 	Recursos Españoles 	

Book Rich Environments (BRE) Initiative

Collaboration between the National Book Foundation, U.S. Departments of Education, Housing and Urban Development (HUD), and the Urban Libraries Council



Book Rich Environments (BRE) Goals

- Distribute free, high quality, diverse books to children living in HUD-assisted housing
- Engage children and families in literacy activities
- Establish partnerships between housing authorities, local library and literacy partners

Bubble Show at Cueva de Oso (Selma)



Storytime and Crafts at Cedar Courts (Fresno)





Storytime and Crafts at Kuffle Terrace (Orange Cove)

2018 BRE Outcomes

- Over 3,000 books given to youth to build home libraries
- 1,000 books added to Fresno Housing on-site libraries
- 30 events with book distribution
- 100 Library Sign-Ups at FH events
- Local Partners: Reading & Beyond, Boys and Girls Club, and Break the Barriers



Mixed Finance Properties – 2019 Budgets

*Fresno Housing Authority
Boards of Commissioners Meeting
December 18, 2018*

'Mixed Finance' Properties

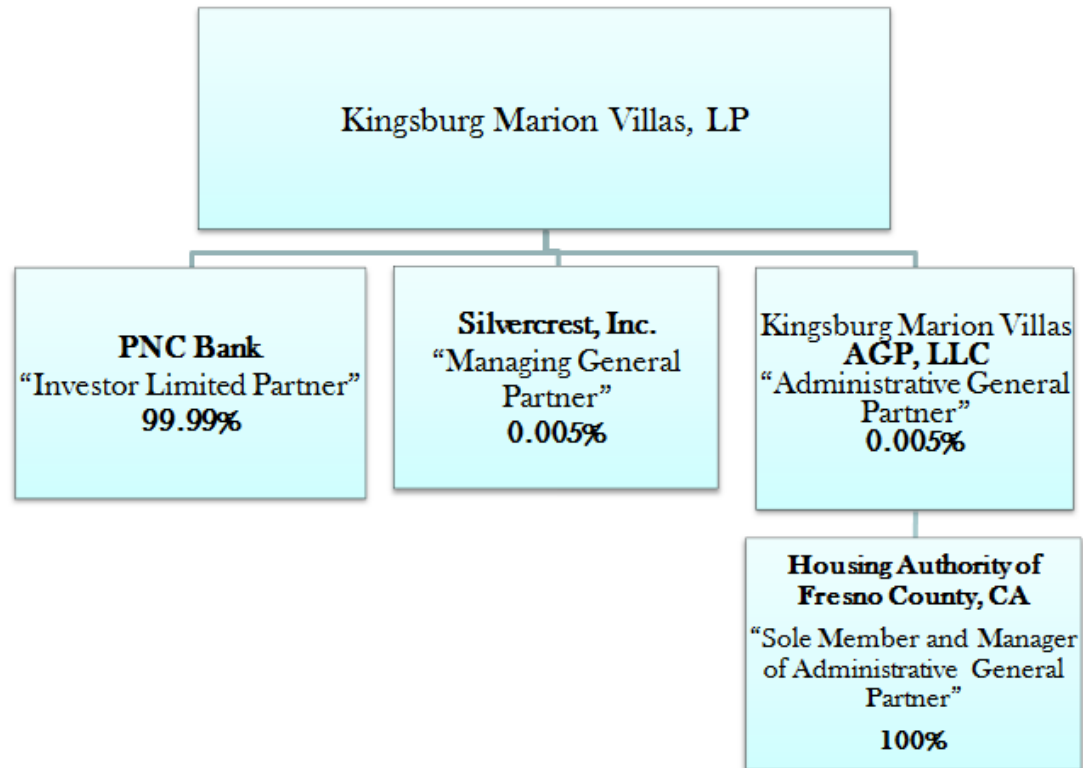
What are they?

- Properties owned by a limited partnership.
- Originally sponsored and developed by the Housing Authority.
- Mixed finance means that several funding sources were used to develop the properties (examples: Tax Credits, HRFC, private mortgage, HOME funds, etc...).

Why are we involved?

- Silvercrest, Inc. (an instrumentality of the HA) is the Managing General Partner of the limited partnerships, and is responsible for on-going operations of the partnership.
- The Agency and its subsidiaries (Silvercrest, HRFC) have a vested interest in the properties.
- Properties fulfill Agency's mission to create affordable housing.

Sample Ownership Structure – Marion Villas



Summary of Mixed Finance Properties

- Twenty-nine (29) properties are included in the 2019 Budgets (approx. 1,900 units)

- Villa Del Mar (2002)
- Elderberry (2004)
- Yosemite Village (2008)
- Parc Grove Commons II (2010)
- Granada Commons (2010)
- Pacific Gardens (2011)
- Renaissance at Trinity (2011)
- Renaissance at Santa Clara (2011)
- Renaissance at Alta Monte (2011)
- Bridges at Florence (2012)
- Parc Grove Commons NW (2012)
- SE Fresno RAD (2013)
- Mendota RAD (2013)
- Orange Cove RAD (2013)
- Kings River Commons (2014)
- City View @ Van Ness (2014)
- Viking Village RAD (2014)
- Marion Villas (2015)
- Fultonia/Cedar Heights (2016)
- Paseo 55 (2017)
- Legacy Commons I (2017)
- Rio Villas (2017)
- Cueva De Oso (2017)
- Fenix @ Calaveras (2017)
- Legacy Commons II (2018)
- Renaissance at Parc Grove (2018)
- Blossom Trail (2018)
- Magill Terrace (2019)
- Oak Grove (2019)

Budgeting for Property Success

	2017	2018	2019
High Performers (NOI > \$500/Unit)	8	21	28
Standard Performers (NOI \$50-\$500/Unit)	10	3	1
Low Performers (NOI < \$50/Unit)	5	1	0
Total	23	25	29

- Each property is managed as a separate and independent financial entity.
- At the very least, each property should break even each year (Net Operating Income or NOI should be > 0).
 - NOI vs Cash Flow
- Note the trend from 2017 to 2019 property budgets
 - 15 Properties as standard or low performers in 2017 versus 1 in 2019
 - Better rent projections & rent increases at some sites
 - Restructure of site staff

2019 Budget Goals

- The major goals of the 2019 budgets are to:
 - Achieve positive net operating income on all properties
 - Leverage the well-performing assets in order to provide maximum benefits to lenders, partners, and stakeholders
 - Meet stabilization requirements for newer properties (2017-2019 deals)
 - Maintain and modernize properties, as needed
 - Provide ample resident services

2019 Budgets – High Performers

	Parc Grove Northwest	Granada Commons	Parc Grove Commons II	Renaissance at Parc Grove	Renaissance at Trinity	Renaissance at Santa Clara	Renaissance at Alta Monte	Bridges at Florence	City View @ Van Ness
	148	16	215	39	20	70	30	34	45
TOTAL INCOME	1,391,309	134,359	1,887,600	348,471	213,024	622,405	274,633	211,630	351,600
TOTAL EXPENSES	864,553	115,690	1,397,900	285,548	189,176	574,660	249,870	178,763	240,015
NET OPERATING INCOME	526,756	18,669	489,700	62,923	23,848	47,745	24,762	32,867	111,585
TOTAL NON-OPERATING EXPENSES	487,344	5,068	345,656	24,000	14,176	44,700	24,101	30,910	110,476
CASH FLOW	39,412	13,601	144,044	38,923	9,672	3,045	661	1,957	1,109
NOI PER UNIT	3,559	1,167	2,278	1,613	1,192	682	825	967	2,480

	Mendota RAD	Orange Cove RAD	Fresno RAD	Viking Village RAD	Marion Villas	Pacific Gardens	Legacy Commons I	541 @ South Tower & Cedar Heights	Rio Villas
	124	90	193	40	46	56	64	45	30
TOTAL INCOME	1,138,757	792,995	1,621,411	312,534	336,483	344,782	521,154	315,828	271,623
TOTAL EXPENSES	889,857	611,039	1,250,734	250,991	223,421	301,383	341,757	265,568	186,755
NET OPERATING INCOME	248,900	181,956	370,677	61,544	113,062	43,399	179,397	50,260	84,868
TOTAL NON-OPERATING EXPENSES	237,563	31,302	57,900	23,191	12,198	16,800	78,171	13,500	30,951
CASH FLOW	11,337	150,654	312,777	38,353	100,864	26,599	101,226	36,760	53,917
NOI PER UNIT	2,007	2,022	1,921	1,539	2,458	775	2,803	1,117	2,829

2019 Budgets – High Performers cont.

	Paseo 55	Villa Del Mar	Kings River Commons	Cueva de Oso	Blossom Trail	Elderberry	Legacy Commons II	Fenix @ Calaveras & Fenix @ Glenn	Magill Terrace	Oak Grove
	55	48	60	47	48	75	46	30	60	56
TOTAL INCOME	393,959	517,799	461,242	381,560	344,398	470,850	506,132	210,280	458,587	480,463
TOTAL EXPENSES	307,840	436,405	352,271	345,041	298,156	331,751	444,239	157,835	354,173	326,291
NET OPERATING INCOME	86,119	81,394	108,971	36,520	46,242	139,099	61,893	52,445	104,413	154,172
TOTAL NON-OPERATING EXPENSES	16,500	9,515	108,095	14,400	14,400	84,952	19,200	9,000	18,000	16,800
CASH FLOW	69,619	71,879	876	22,120	31,842	54,147	42,693	43,445	86,413	137,372
NOI PER UNIT	1,566	1,696	1,816	777	963	1,855	1,346	1,748	1,740	2,753

- Total of 28 properties with net operating income of \$3.57 million and projected cash flow of \$1.65 million.

2018 Budgets – Standard Performers

	Yosemite Village
	69
TOTAL INCOME	623,775
TOTAL EXPENSES	597,218
NET OPERATING INCOME	26,558
TOTAL NON-OPERATING EXPENSES	20,700
CASH FLOW	5,858
<i>NOI PER UNIT</i>	<i>385</i>

- 1 property, Yosemite Village, with net operating income of \$27 thousand and projected cash flow of positive \$6 thousand.

2019 Budget

	2018 Budget	2019 Budget
	1697	1899
NET TENANT INCOME	13,530,459	15,559,912
TOTAL OTHER INCOME	112,345	379,732
TOTAL INCOME	13,642,804	15,939,644
TOTAL PAYROLL EXPENSES	2,669,702	3,195,805
TOTAL ADMINISTRATIVE EXPENSES	1,965,623	2,412,278
TOTAL TENANT SERVICES EXPENSES	750,672	756,617
TOTAL UTILITY EXPENSES	1,786,582	2,049,062
TOTAL MAINTENANCE EXPENSES	2,560,202	3,173,632
TOTAL TAXES & INSURANCE EXPENSES	557,182	781,505
TOTAL EXPENSES	10,289,963	12,368,899
NET OPERATING INCOME	3,352,841	3,570,745
TOTAL NON-OPERATING EXPENSES	1,608,580	1,919,568
CASH FLOW	1,744,261	1,651,177
<i>NOI PER UNIT</i>	<i>1,976</i>	<i>1,880</i>

Waterfall Projections

	2015	2016	2017	2018 Projected	2019 Budget
Total Cash Flow	508,852	2,238,331	1,980,000	1,000,000	1,300,000

- Projected cash flow to be disbursed to Agency entities through the “waterfall”.

This items is informational for Fresno Housing Authority
Boards of Commissioners.

As the Managing General Partner, Silvercrest, Inc,. will be
asked to approve the 2019 Mixed Finance Budgets.

Questions or Comments?



Development Update and Acquisition/Rehab Overview

*Boards of Commissioners Meeting
December 18, 2018*



Presentation Overview

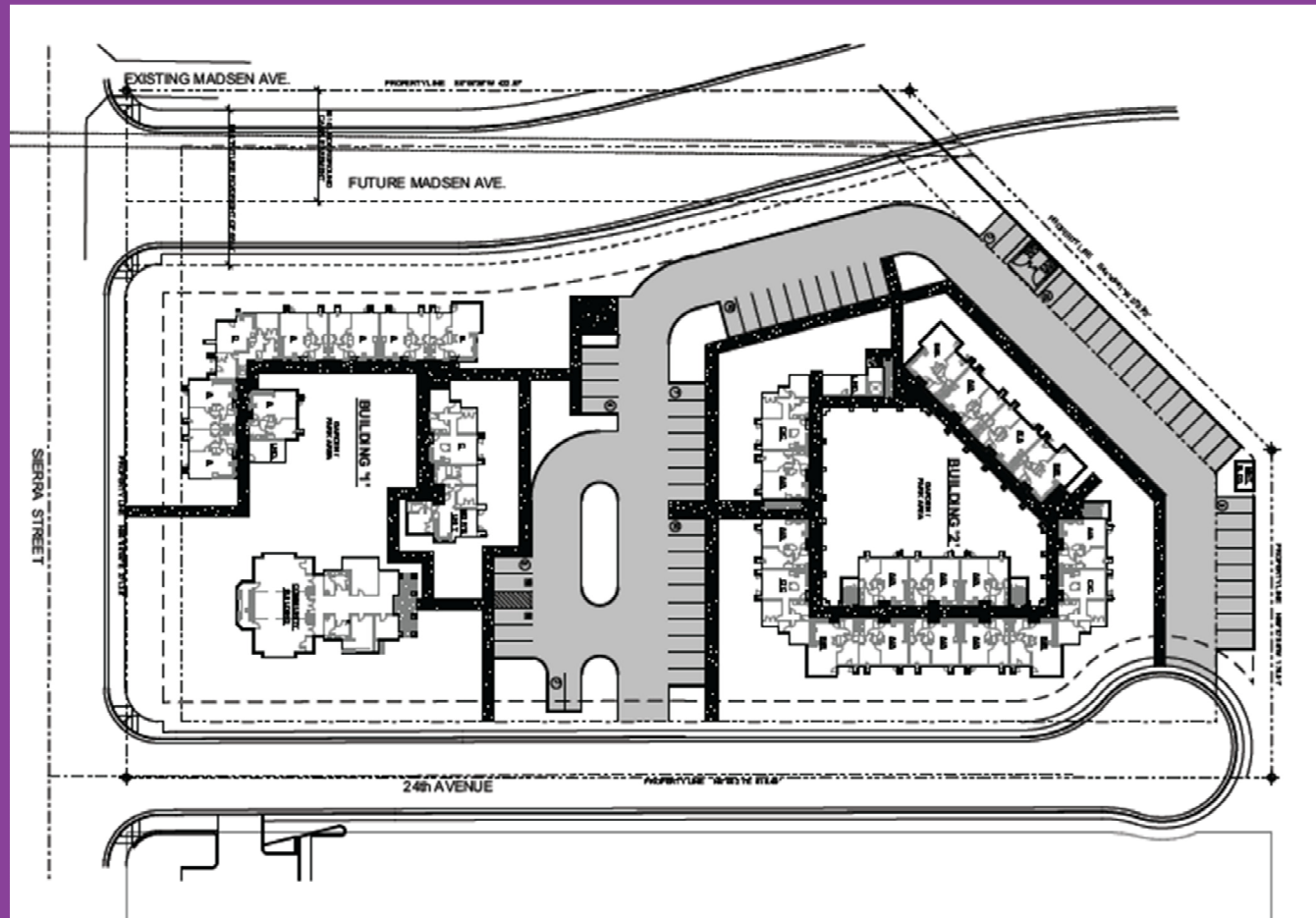
- Potential 1st Round 2019 TCAC
 - Kingsburg Senior Village
 - Huron RAD
- Potential Jan. 2019 NPLH
 - Plaza Terrace/PSH
- Acquisition/Rehab Overview

Kingsburg Senior Village

- Proposed 47 units of senior housing located on 4.84 acres of vacant land at the SW corner of Madsen Avenue and Sierra Street, Kingsburg, CA
- Parcel owned by Kingsburg RDA Successor Agency
- City has approved donating the land; also considering development impact fee deferral
- Development Agreement (DA) with the City of Kingsburg approved at the September 2018 Board Meeting
- City is engaged in the design process
- *Design workshop held with Marion Villas residents 12/7*
- *County HOME program application due Jan. 2019*
- *Potential 1st Round 2019 Tax Credit application*



Kingsburg Senior Village Site Plan



Huron RAD

- This project satisfies the Strategic Priorities of new construction and conversion of existing units utilizing RAD
- Proposed new construction of 61 units, community building and approx. 3,500 sq.ft. of commercial/civic space
- Potential for residents from older Huron LIPH units to transfer their assistance to these new construction units
- *Board authorized entering into a conditional Purchase and Sale Agreement for \$1 with the RDA Successor Agency to the City of Huron in Nov 2018*
- *Design meeting with City of Huron scheduled in Jan 2019*
- *Potential 1st Round 2019 Tax Credit application*



Plaza Terrace (Fresno)

- Property consists of 32 units and is owned by Fresno Housing
- Former location of emergency housing program partnership with County of Fresno DSS
- Potential site for permanent supportive housing in partnership with County of Fresno DBH
- *CUP amendment submitted Dec 2018*
- *Potential Jan 2019 No Place Like Home application*
- *Proposed MOU with County of Fresno DBH for Special Needs Housing Program/NPLH partnership Jan 2019 Board Action Item*

Plaza Terrace(Fresno)

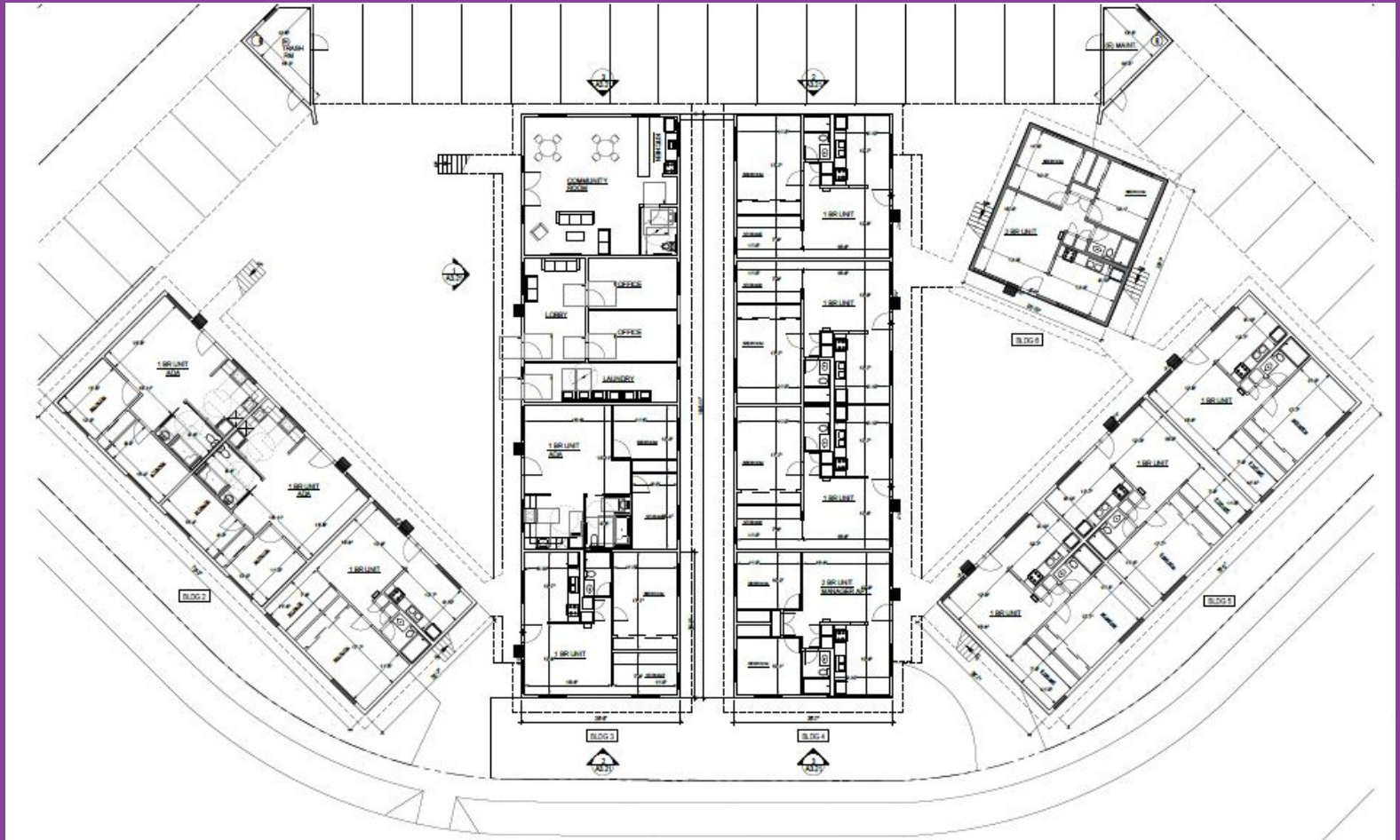
32 Two-bedroom units





Plaza Terrace Site (Fresno)

Plaza Terrace Site Plan (Fresno)





Acquisition & Rehab Overview

Fenix @ Calaveras (Before)



Fenix @ Calaveras (After)





San Ramon Apartments (Before)

15



San Ramon Apartments (After)

16

Typical apartment complex on the market



Asking Price: \$65,000 per unit

Location: Near Blackstone & Dakota

Needs: \$50,000 per unit worth of rehab to remain functional for the next 10-15 years

Market Rents: \$750/1 bed, \$925/2 bed, \$1050/3 bed

30 Unit Property *Sources*



Eight unit complex in SE Fresno



Acquisition/Rehab Site Selection Criteria

- Location (Target Areas)
- Project Size (Range)
- Physical Condition
- Level of Rehab
- Desired Level of Affordability
- Short and Long Term Objectives/Goals
- Potential Gap Financing Sources

Example A-Minor Rehab



8-UNIT COMPLEX SOUTHEAST FRESNO

Property Characteristics

- 3-bedroom units
- In foreclosure (est. \$620,000)
- Current Rent: \$900
- Proposed Rent: \$1,051
- Fair condition (\$30,000/unit in rehab)
- No Developer Fee

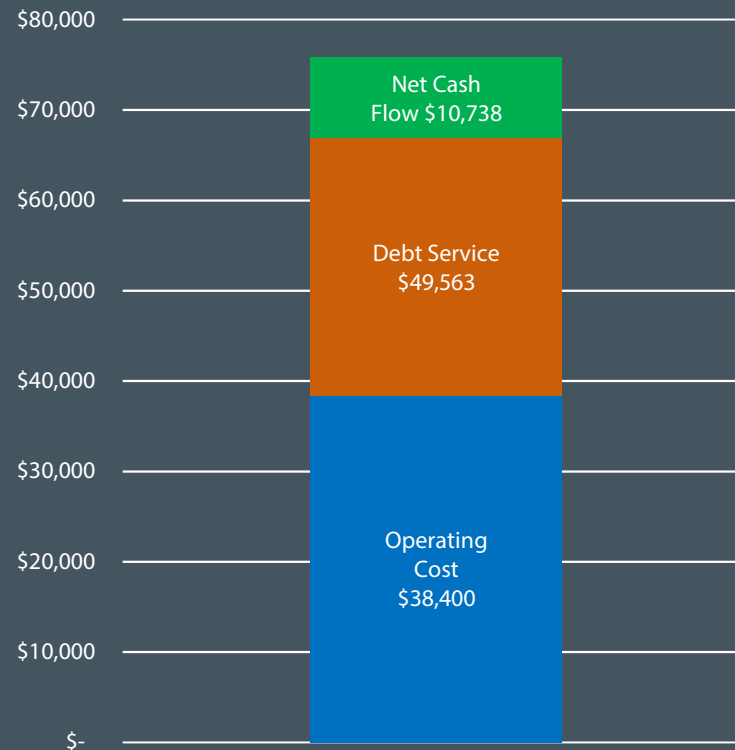
Development

Sources	
Debt	\$ 800,000
Gap	\$ 389,818
TDC	\$ 1,183,018

Uses	
Acquisition	\$ 620,000
Rehab	\$ 314,640
Soft costs	\$ 248,378
	\$ 1,183,018

Gap per unit: \$48,727

Operations



Example A-Major Rehab



8-UNIT COMPLEX SOUTHEAST FRESNO

Property Characteristics

- 3-bedroom units
- In foreclosure (est. \$620,000)
- Current Rent: \$900
- Proposed Rent: \$1,051
- Poor condition (\$100,000/unit in rehab)
- No Developer Fee

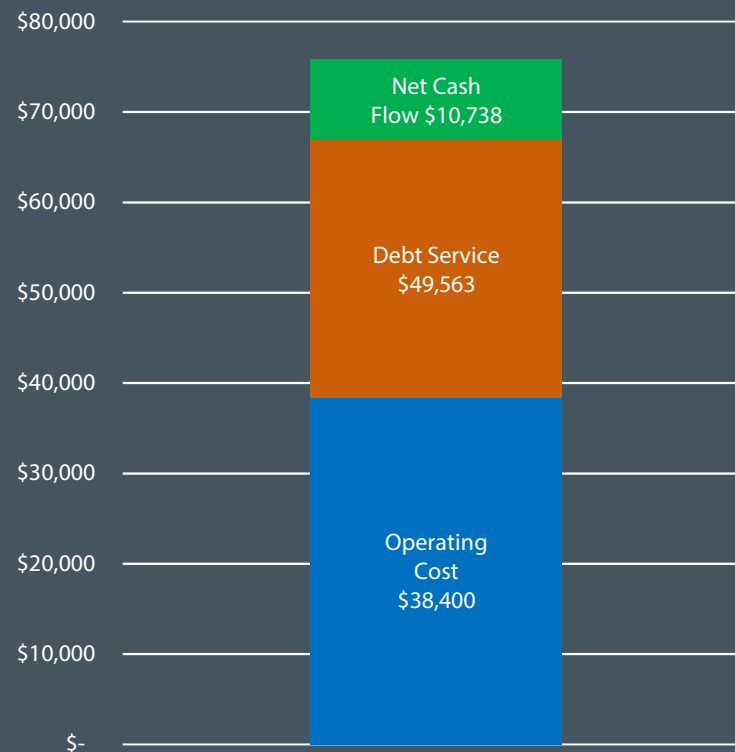
Development

Sources	
Debt	\$ 800,000
Gap	\$ 1,123,978
TDC	\$ 1,923,978

Uses	
Acquisiton	\$ 620,000
Rehab	\$ 1,048,800
Soft costs	\$ 255,178
	\$ 1,923,978

Gap per unit: \$140,497

Operations



Example B – Minor Rehab



Property Characteristics:

- (12) 2-Bd, (7) 3-Bd. units
- Asking price: \$1,615,000
- Current Avg. Rent: \$650
- Potential Avg. Rent: \$916
- Fair condition (\$30,000/unit in rehab)
- No Developer Fee

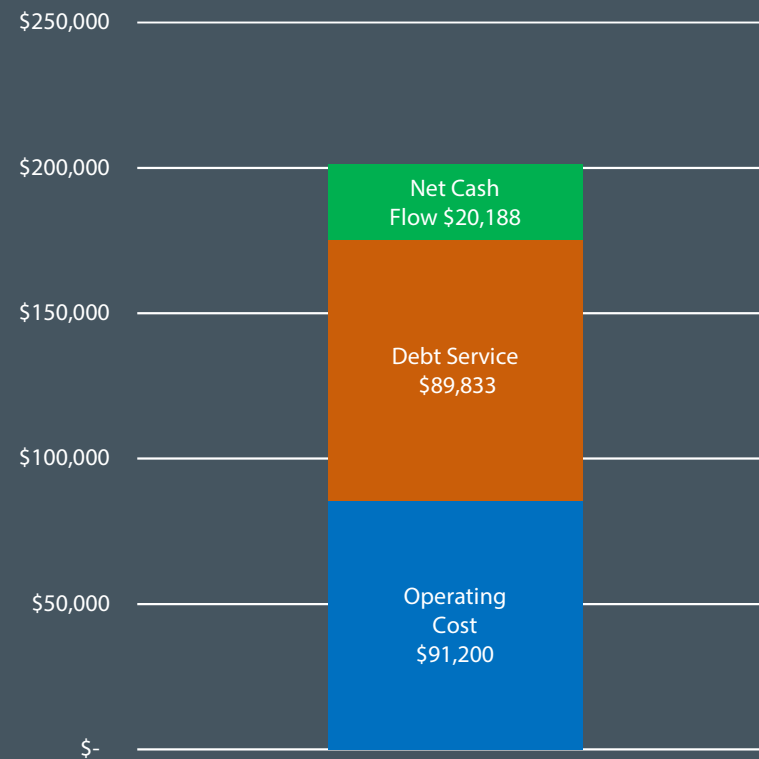
Development

Sources	
Debt	\$ 1,450,000
Gap	\$ 1,207,911
TDC	\$ 2,657,911

Uses	
Acquisiton	\$ 1,615,000
Rehab	\$ 747,270
Soft costs	\$ 295,641
	\$ 2,657,911

Gap per unit: \$63,574

Operations



Example B – Major Rehab



Property Characteristics:

- (12) 2-Bd, (7) 3-Bd. units
- Asking price: \$1,615,000
- Current Avg. Rent: \$650
- Potential Avg. Rent: \$916
- Poor condition (\$100,000/unit in rehab)
- No Developer Fee

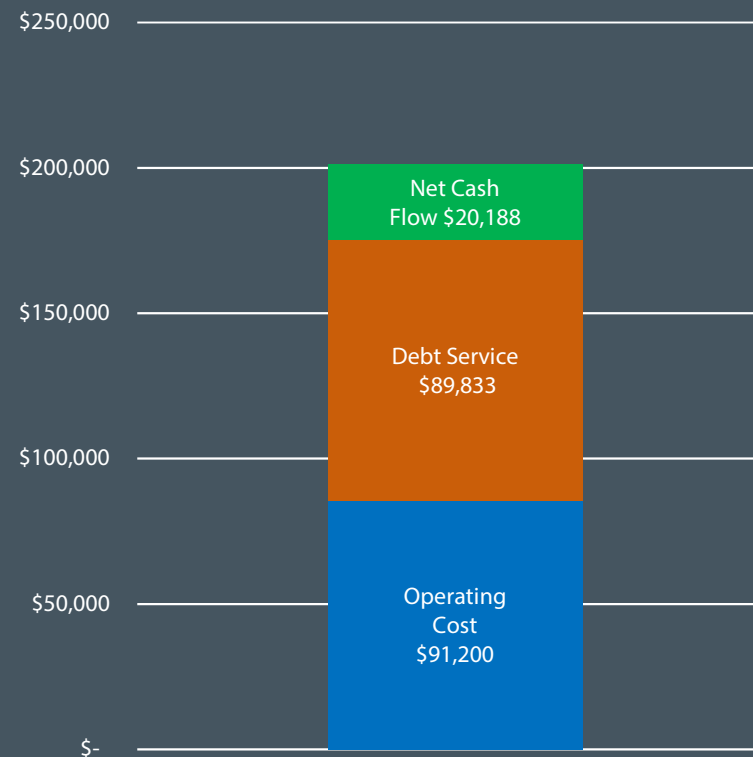
Development

Sources	
Debt	\$ 1,450,000
Gap	\$ 2,951,541
TDC	\$ 4,401,541

Uses	
Acquisiton	\$ 1,615,000
Rehab	\$ 2,490,900
Soft costs	\$ 295,641
	\$ 4,401,541

Gap per unit: \$155,344

Operations



Example C – Major Tax Credit Rehab



240-250 N Calaveras, Fresno, CA, 93701 (LOWELL NEIGHBORHOOD)

Development

Sources	
Tax Credit Equity	\$ 5,407,682
HRFC Funds	\$ 1,458,765
City HOME	\$ 1,200,000
Deferred Dev Fee	\$ 200,000
TDC	\$ 8,266,447

Uses	
Acquisition	\$ 1,030,000
Rehab	\$ 2,783,634
New Construction	\$ 1,786,770
Developer Fee	\$ 721,544
Soft Costs	\$ 1,944,499
TDC	\$ 8,266,447

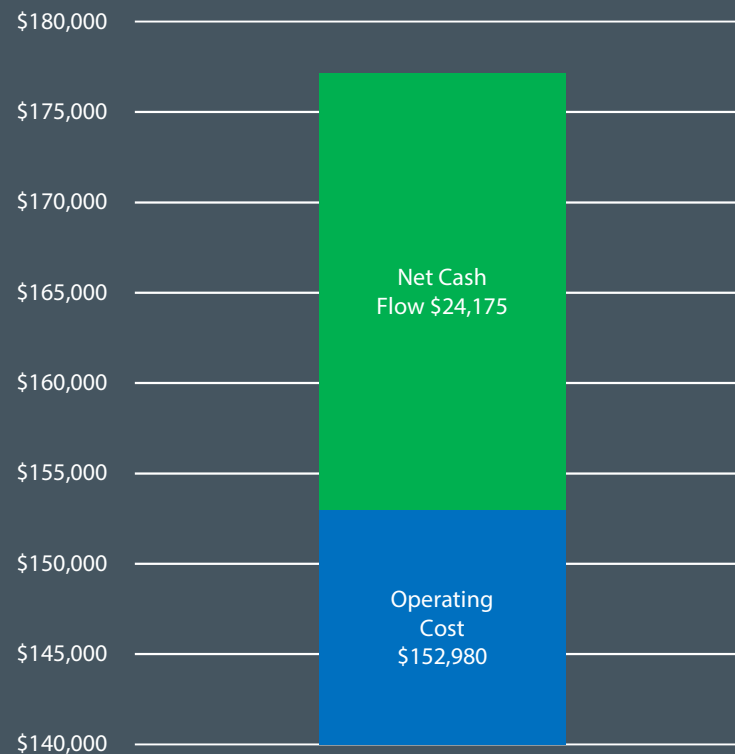
HRFC spend per unit =
\$48,626

**Sources and Uses include 8 units of New Construction*

Property Characteristics:

- Twenty-two (2) Studios, (16) 1-Bd, (4) 2-Bd. units
- Asking price: \$920,000
- Current Avg. Rent: \$520
- Poor condition (\$125,000/unit in rehab)
- Developer Fee Earned: \$721,544

Operations



Potential Gap Financing Sources

- HOME Funds (Strings attached)
- HRFC
- Project-basing vouchers to increase borrowing capacity
 - *Increased debt capacity*

Acquisition/Rehab Considerations

What value could the Housing Authority bring to small acquisition/rehab projects?

- Engaged and responsible management
- Improved physical appearance
- In some gentrifying neighborhoods, may preserve affordability over the long-term

Are there drawbacks to small acquisition/rehab in Fresno?

- Rents are already naturally affordable in these neighborhoods, but the quality is often quite poor
- Difficult to finance substantial rehab without leveraging tax credits, etc. and there is no developer fee to cover costs
- Smaller rehab projects would be less efficient to manage due to scattered locations

Questions, Comments, and Possible Next Steps?

Extra Slides

Acquisition/Rehab Site Selection Criteria

- Location (Target Areas)
- Project Size (Range)
- Physical Condition
- Level of Rehab
- Desired Level of Affordability
- Short and Long Term Objectives/Goals
- Potential Gap Financing Sources

Financing Considerations

- 9% LIHTC
 - Location and unit mix may need to satisfy specific requirements
 - Limited resource
 - Long term affordability secured
 - Potential access to affordable housing public and private funding
- 4% LIHTC
 - Location and unit mix is flexible
 - Project size will generally need to be larger
 - Long term affordability secured
 - Potential access to affordable housing public and private funding
- Conventional Financing
 - Location and unit mix is flexible
 - No required affordability restrictions
 - Equity investment required
 - May add value over time with market rent growth



2019 Budget and Goal Adoption – Agency Operations and Housing Assistance Payments

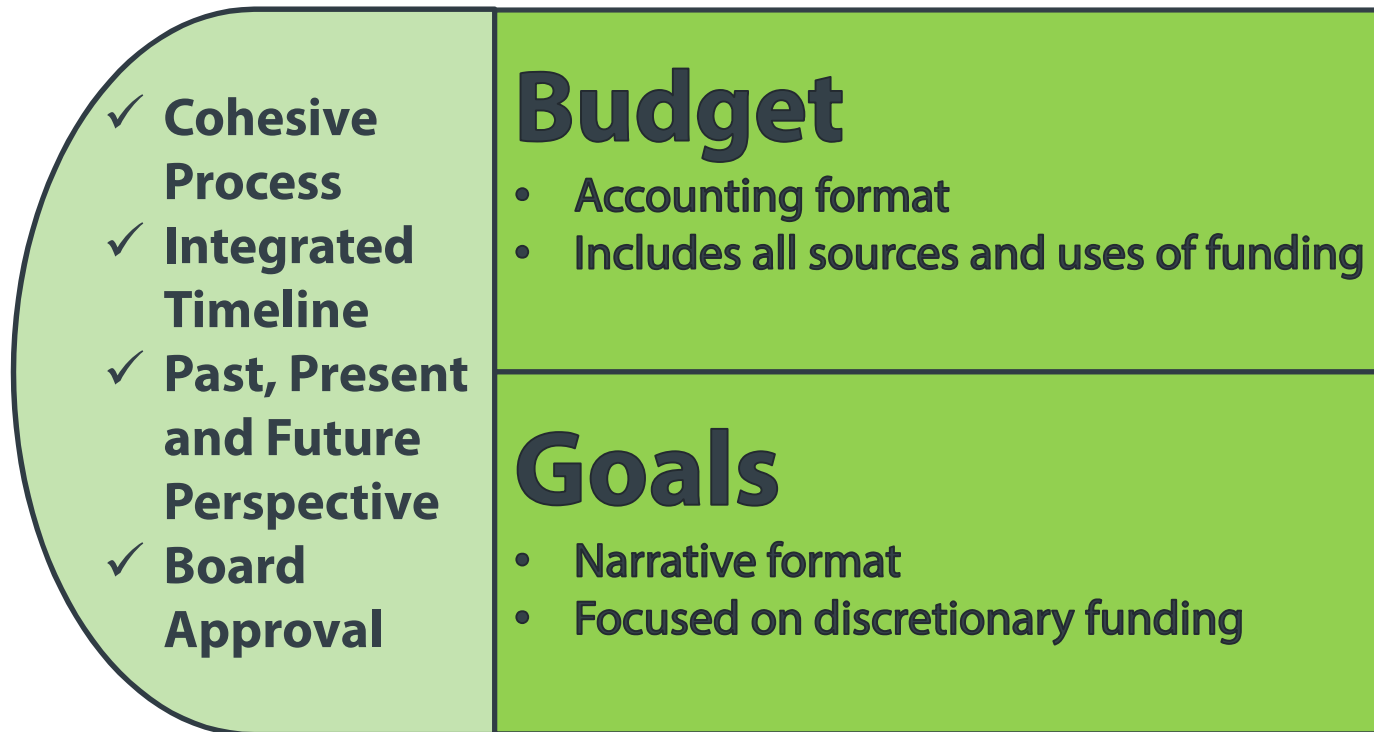
*Boards of Commissioners Meeting
December 18, 2018*



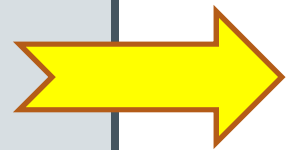
Overview

- 2019 Budget/Goal Development Process & Timeline
- 2019-2020 Strategic Goals
- 2019 Budget Overview
- Budget Augmentations
- Agency-Wide Fiscal Impact
- 2019 Housing Assistance Payments (HAP) Budget
- Next Steps

Budget Development Process



Timeline for 2019 Goals & Budget Development



August	<ul style="list-style-type: none">• Review 2018 goals & budget progress• Outline timeline for developing 2019 goals & budget• Provide an update on the Federal budget for 2018 & 2019
September	<ul style="list-style-type: none">• Create opportunities for engagement around goals & budget• Discuss possible 2019 goals at the Board Retreat• Update Boards on community presentations
October	<ul style="list-style-type: none">• Present the first draft of the 2019 goals and operating budget• Receive feedback and update goals and budget
November	<ul style="list-style-type: none">• Second draft of budget and goals presented to the Boards
December	<ul style="list-style-type: none">• Request Boards approval on 2019 goals and operating budgets
January	<ul style="list-style-type: none">• Publish an Executive Summary outlining the goals and the budget

Final: 2019-20 Strategic Goals

FontParagraphStyles

FRESNO VIBRANT
QUALITY HOUSING
AUTHORITY COMMUNITIES
ENGAGED RESIDENTS

www.fresnohousing.org

1331 Fulton Mall, Fresno, California 93721 (559) 443-8400 TTY (800) 735-2929

2019-20 Agency Goals and Strategic Plan Implementation

Create and sustain vibrant communities throughout Fresno County

Quality housing. Engaged residents. Vibrant communities.

Goal One – PLACE

Develop and expand the availability of quality affordable housing options throughout city and county by growing and preserving appropriate residential assets and increasing housing opportunities for low-income residents.

1. Create a robust, balanced pipeline for development activities that appropriately responds to the needs of the low income residents of Fresno County. When evaluating development opportunities, factor the following Board priorities:

Budget Augmentations to Support Strategic Goals

- Economic Mobility Initiatives
 - HCV Mobility & Navigation Pilot
 - High-Income/Low-HAP Pilot
 - Workforce Development (incl. Section 3) Program
- Landlord Outreach Program
- Resident & Community Safety Initiatives
- Street 2 Home Initiative
- Enhanced Public Relations & Communication Campaign
- Community Events & Local Participation
- Program, Policy & Data Analysis

2019 Budget Augmentations

	2019 Base Net Operating Income	2019 Budget Enhancements	2019 Requested Budget
Core	(860,000)		
Communications & Community Outreach		(450,000)	
Board Room Refresh		(50,000)	
Data & Program Analysis		(100,000)	
Total			(1,460,000)
AHD - Housing Choice Voucher	(1,060,000)		
Mobility Pilot		(135,000)	
Landlord Outreach Program		(325,000)	
Total			(1,520,000)
AHD - Resident Services	5,000		
Workforce Development Pilot		(350,000)	
Program Analyst		(25,000)	
Resident Safety Program		(75,000)	
High Income Pilot		(225,000)	
Total			(670,000)
AHD - Homeless Programs	(370,000)		
Street 2 Home Initiative		(100,000)	
Total			(470,000)
Planning & Development	2,975,000		
Neighborhood Programs & Analysis		(75,000)	
South West Fresno Planning		(325,000)	
Total			2,575,000
Unrestricted Properties	425,000		425,000
Unrestricted Programs Total	1,115,000	(2,235,000)	(1,120,000)

2019 Requested Budget

	Total 2019 Budget						Total 2019 Budget
	Core	Instrumentalities	Planning & Development	Assisted Housing	Housing Management	UP	
NET TENANT INCOME	-	-	-	-	5,366,476	2,550,710	7,917,186
TOTAL INTEREST INCOME	8,000	1,713,000	-	-	-	-	1,721,000
TOTAL OTHER INCOME	974,000	1,350,000	170,000	1,157,705	25,996	712,302	4,390,003
TOTAL ADMIN & MANAGEMENT FEE INCOME	8,739,908	80,000	-	-	-	-	8,819,908
TOTAL DEVELOPER FEE INCOME	-	-	5,521,860	-	-	-	5,521,860
TOTAL HUD GRANT INCOME	-	-	-	12,118,911	4,282,660	-	16,401,571
TOTAL OTHER GRANT INCOME	-	-	-	514,532	555,418	22,199	1,092,149
TOTAL INCOME	9,721,908	3,143,000	5,691,860	13,791,148	10,230,550	3,285,211	45,863,676
TOTAL PAYROLL EXPENSES	7,023,013	-	1,450,179	7,584,893	2,422,006	487,913	18,968,005
TOTAL ADMINISTRATIVE EXPENSES	3,418,339	382,150	1,645,312	5,802,611	1,875,579	332,471	13,456,463
TOTAL TENANT SERVICES EXPENSES	51,000	-	5,000	2,967,050	246,757	6,450	3,276,257
TOTAL UTILITY EXPENSES	172,144	-	-	-	1,737,628	458,690	2,368,462
TOTAL MAINTENANCE EXPENSES	474,662	-	9,000	92,899	2,024,446	891,434	3,492,442
TOTAL TAXES & INSURANCE EXPENSES	44,300	8,900	6,600	7,451	419,546	66,025	552,822
TOTAL EXPENSES	11,183,459	391,050	3,116,092	16,454,904	8,725,963	2,242,984	42,114,451
NET OPERATING INCOME	(1,461,551)	2,751,950	2,575,768	(2,663,756)	1,504,587	1,042,227	3,749,225
TOTAL NON-OPERATING EXPENSES	-	-	-	-	1,076,169	617,384	1,693,553
NET INCOME	(1,461,551)	2,751,950	2,575,768	(2,663,756)	428,417	424,843	2,055,672
UNRESTRICTED NET INCOME	(1,461,551)	-	2,575,768	(2,663,756)	-	424,843	(1,124,696)

Post-November Changes to Budget

Revenue

- Net Tenant Income increased in Housing Management and Unrestricted Properties as final budgets were completed
- Developer Fee Income increased due to updated developer fee schedule

Expenses

- Refined payroll estimates
 - Timing of new hires
 - Updated pension expenses for Q3 & Q4 2019
- Administrative Expenses increased as centralized costs were charged out to various programs (IT/IS, Central Office rent, COCC fees)
- Maintenance expenses increased as projects were defined and updated cost estimates provided

Agency Unrestricted Reserves

Unrestricted Reserves	\$ Change	Balance
2013 Financial Results	1,570,359	1,570,359
2014 Financial Results	1,368,730	2,939,089
2015 Financial Results	153,228	3,092,317
2016 Financial Results	261,439	3,353,756
2017 Financial Results	920,239	4,273,995
2018 <i>Projected</i>	1,892,874	6,166,869
2019 <i>Budget</i>	(1,124,696)	5,042,173
Total Unrestricted Reserves	5,042,173	

Housing Assistance Payments

Program	Total HAP Revenue	Total HAP Expenses	Total HAP Reserve Usage
HCV	79,813,773	(85,732,289)	(5,918,516)

- Housing Assistance Payments are the funds we receive from HUD and then pay to the landlords who participate in the HCV program
- Tenants pay an average of 30% of their income to the landlord, and then the HAP payment is made to supplement the remainder.
- 2019 Budget shows utilization of \$5.9 million in HAP reserves, leaving \$2.1 million of reserves remaining at year end.

Federal Budget Update

- Current Continuing Resolution (CR) expires on Dec. 21
- Partial government shutdown will occur if no action is taken before that date
- Three options:
 - Pass a short-term CR that would run into January 2019
 - Pass all or a portion of the remaining spending bills
 - Pass a full year CR to fund the government until September 30, 2019
- In the event of a government shutdown, FH would continue to operate as usual
- Communication strategy in place to staff, residents, property owners and community partners

Next Steps



	2019 Base Net Operating Income	Budget Enhancements			2019 Requested Budget	Notes
		October Presentation	November Presentation	December Budget Request		
Unrestricted Properties	425,000				425,000	
Housing Choice Voucher	(1,060,000)					
Mobility Pilot		(300,000)	(400,000)	(135,000)		Timing of program start date
Landlord Outreach Program		(250,000)	(300,000)	(325,000)		Continued refinement of budget estimates
Total					(1,520,000)	
Resident Services	5,000					
Workforce Development Pilot		(350,000)	(260,000)	(350,000)		Timing of program start date
FHEC Investment		(150,000)	-	-		No investment needed in 2019
Program Analyst		(100,000)	(100,000)	(25,000)		Continued refinement of budget estimates
Resident Safety Program		(150,000)	(170,000)	(75,000)		Timing of program start date
High Income Pilot		(100,000)	(150,000)	(225,000)		Timing of program start date
Total					(670,000)	
Homeless Programs	(370,000)					
Street 2 Home Initiative		(100,000)	(100,000)	(100,000)		
Agency Match for Homeless Programs		-	(250,000)	-		Added to Baseline as a continued operational expense
Total					(470,000)	
Planning & Development	2,975,000					
Neighborhood Programs & Analysis		(225,000)	(50,000)	(75,000)		
Development Financing Analysis		(75,000)	(75,000)	-		No investment needed in 2019
South West Fresno Planning		(150,000)	(275,000)	(325,000)		Continued refinement of budget estimates
Total					2,575,000	
Administrative Services	(860,000)					
Public Relations & Communication Efforts		(350,000)	(500,000)	(450,000)		Continued refinement of budget estimates
Board Room Refresh		(50,000)	(50,000)	(50,000)		
Asset Management		-	(150,000)	-		No investment needed in 2019
Data & Program Analysis		(50,000)	(100,000)	(100,000)		
Total					(1,460,000)	
Unrestricted Programs Total	1,115,000	(2,400,000)	(2,930,000)	(2,235,000)	(1,120,000)	



Consideration of the Contracts for Legal Services

*Boards of Commissioners Meeting
December 18, 2018*



Action Items

Consideration of the Approval of Contract for:

- 8c) General Counsel
- 8d) Human Resources Counsel
- 8e) Federal and State of CA Counsel
- 8f) Affordable Housing Development Counsel
- 8g) Unlawful Detainers Counsel

Procurement Process Overview

- Why procure?
 - Transparency
 - Stewardship
 - Compliance
- Request for Proposal (RFP) was published in June 2018
 - Agency received proposals from twelve firms bidding on five separate lots
 - General Counsel
 - Human Resources
 - Federal & State Matters
 - Affordable Housing Development
 - Unlawful Detainers

Procurement Process Overview

- Staff scored each proposal based on the Agency's evaluation factors to determine the competitive range
- Firms who's proposals were determined to be in the competitive range were invited to an in-person interview with members of the Boards and Executive staff
- Firms were scored again after the interviews to determine the highest ranked proposers
- Staff is recommending that the highest ranked firms be award the contract, and for the CEO/Executive Director to negotiate and execute the contracts

General Counsel

- **Action Item 8c**
- Baker, Manock & Jensen PC was the highest ranked proposer
- Staff is recommending a contract with Baker, Manock, and Jensen PC, for:
 - an annual amount not to exceed \$300,000
 - an initial term of January 1 to December 31, 2019
 - an option to renew the contract for four (4) additional, one-year terms

Human Resources

- **Action Item 8d**
- Atkinson, Andelson, Loya, Ruud, & Romo (AALRR) was the highest ranked proposer
- Staff is recommending a contract with AALRR for:
 - an annual amount not to exceed \$150,000
 - an initial term of January 1 to December 31, 2019
 - an option to renew the contract for four (4) additional, one-year terms

Federal and State Matters

- **Action Item 8e**
- Ballard Spahr, LLP was the highest ranked proposer
- Staff is recommending a contract with Ballard Spahr for:
 - an annual amount not to exceed \$50,000
 - an initial term of January 1 to December 31, 2019
 - an option to renew the contract for four (4) additional, one-year terms

Affordable Housing Development

- **Action Item 8f**
- Ballard Spahr, LLP was the highest ranked proposer
- Staff is recommending a contract with Ballard Spahr for:
 - an annual amount not to exceed \$600,000
 - an initial term of January 1 to December 31, 2019
 - an option to renew the contract for four (4) additional, one-year terms

Unlawful Detainers

- **Action Item 8g**
- Based on the experience and capacity of each firm, staff is recommending two contracts for this lot
- Contract with Steven R. Hrdlicka, Attorney at Law for:
 - an annual amount not to exceed \$50,000
 - an initial term of January 1 to December 31, 2019
 - an option to renew the contract for four (4) additional, one-year terms
- Contract with Baker, Manock & Jensen PC for:
 - an annual amount not to exceed \$25,000
 - an initial term of January 1 to December 31, 2019
 - an option to renew the contract for four (4) additional, one-year terms