

INTRODUCTION

This contract by and between the Housing Authority (hereinafter “the Agency”), and _____, (hereinafter “the Contractor”) is hereby entered into this __ day of __, 2018.

Services pursuant to this contract shall begin on the __ day of __, 2018, and shall end on the __ day of __, 2018, 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. P120XX.

2.2 Cost/Value of Services.

2.2.1 Contract Value. The total Not-To-Exceed (NTE) value of this contract is:

\$XXX,XXX.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.

2.2.2 The Contractor shall be reimbursed for _____ as indicated in Appendix No. _.

2.3 Renewal Options. This contract is initially executed for the period of three (3) years with the option, at the Agency's discretion, of two (2) additional one-year option periods, for a maximum total of five (5) years.

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: Accounts Payable
1331 Fulton Mall, Fresno, California 93721
Acct_ap@hafresno.org

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.;

2.6.2.5 Applicable Purchase Order No.;

2.6.2.6 Brief description of services rendered, including applicable time frame, total hours being billed for each service at each detailed site, 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 Independent 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 Independent 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 Independent Contractor liable for any damages caused by any disclosure of any Confidential Information whether intentional or inadvertent. The Independent Contractor agrees that he 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 Independent 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: Scott Berry, Procurement Analyst
1331 Fulton Mall, 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
Attn: Scott Berry, Procurement Analyst
1331 Fulton Mall, 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:

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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. 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.** The Section 3 Plan;
- 14.1.3** **Appendix No. 3.** Scope of Services, as agreed upon by negotiation between the Agency and the contractor;

14.1.4 Appendix No. 4. 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. P12003 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:

[Company Name]:

By: _____ Date: _____

[Name], [Title]

Fresno Housing Authority:

By: _____ **Date:** _____

Preston prince, CEO/Executive Director

SAMPLE