

CONSTRUCTION CONTRACT #XXXXXXX
BETWEEN OWNER AND CONTRACTOR

AGREEMENT made as of the _____ day of Month in the year of Two Thousand Fifteen

BETWEEN the Owner:
XXXXXX

and the Contractor:
XXXXXX
Address
City, State ZIP
License No.: XXXXXXXX

The Project is:
NAME
ADDRESS
in CITY, California

The Project consists of approximately XX units of affordable housing residential units on a site area of approximately XXX acres.

The Architect is:
Name
ADDRESS
CITY, STATE ZIP

Relationship of the Parties: It is acknowledged and agreed that the relationship between Owner and Contractor is that of independent contractor and nothing in the course of dealing between the Contractor and Owner shall be deemed to create an employment relationship, partnership, and/or joint venture. The Contractor shall not be treated by Owner as an employee for any purpose, including but not limited to laws providing for Social Security taxes and benefits, state or federal unemployment compensation taxes, state or federal tax withholding, or workers' compensation benefits. The Contractor assumes all responsibility for paying all wages, benefits, taxes on monies paid to it under the contract and agrees to hold the Owner harmless from any liability for wages, benefits, and withholding taxes which the Contractor may incur on account of these earnings. The Contractor shall be solely responsible for declaring all income and paying all applicable taxes.

THE OWNER AND CONTRACTOR AGREE AS FOLLOWS:

ARTICLE I: THE CONTRACT DOCUMENTS

1. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- EXHIBIT A: Site Plan
- EXHIBIT B: Construction Schedule
- EXHIBIT C: Contractor Schedule of Values
- EXHIBIT D: List of Drawings and Specifications

EXHIBIT E: HUD form 5370, General Conditions for Construction Contract
EXHIBIT F: Insurance Requirements
EXHIBIT G: N/A
EXHIBIT H: Section 3 Plan
EXHIBIT I: Section 3 Certification
EXHIBIT J: Form Notice Proceed
EXHIBIT K: Form of Installation and Repair Guarantee
EXHIBIT L: Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications
EXHIBIT M: Invitation for Bid, Addendums thereto, Questions and Responses, and Contractor's Bid.
EXHIBIT N: List of additional insured
EXHIBIT O: Subcontractor List

2. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract is the sole and exclusive agreement between Contractor and Owner (and Owner's affiliated persons and entities, including but not limited to the Housing Authority of the City of Fresno, Housing Authority of Fresno County) and all prior negotiations, representations or agreements, either written or oral, are of no force and effect. To the extent that any of the terms of this Construction Contract conflicts with HUD form 5370, General Conditions for Construction Contract (**Exhibit E**), the terms of this document shall control and supercede the conflicting terms in the General Conditions.

ARTICLE II: THE WORK OF THIS CONTRACT

1. The Contractor shall fully perform the Work described in this Agreement and all referenced documents ("Contract Documents"). Contractor agrees to proceed and perform all tasks required to complete the Project.

2. Contractor represents and agrees that it has carefully examined the Contract Documents, has investigated the nature, weather, locality, and site of the work and the conditions and difficulties under which the work is to be performed and that Contractor enters into this Agreement on the basis of its own examination, investigation, and evaluation and not in reliance upon any opinions or representations of the Owner or any of Owner's officers, agents, and/or employees.

3. Contractor is solely responsible for the payment of all wages, as well as compliance with all Federal, State and Local wage laws. Contractor shall indemnify, defend and hold harmless, the owner and any assignees from any noncompliance with these laws.

4. Contractor agrees to provide all labor, materials, tools, equipment, and any other items(s) or service(s) necessary to complete the Project. Contractor agrees to perform the work in a continuous, safe, and professional manner. Contractor shall notify Owner promptly in writing in case of delay.

5. Contractor acknowledges that it has investigated the work site and the conditions contained thereon. Contractor further acknowledges that Owner makes no warranty or representation concerning the suitability, qualities, or any other characteristic of the site.

6. Contractor shall secure the building permit and all other permits and governmental fees, licenses, and inspections as necessary for the proper execution and completion of the work. Contractor shall pay for government fees and licenses that are needed for Contractor to conduct its business operation. Contractor shall provide all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and shall defend, indemnify, and hold the Owner harmless (including the payment of its attorney's fees for counsel of its reasonable choice) from any claim or liability related to any failure to comply with all laws, ordinances, rules, regulations, and orders related to the Project.

7. Contractor shall manage all activities associated with the construction of the work in accordance with this Agreement, including, but not limited to, the following activities:

A. Contractor shall employ a fulltime superintendent to be on the jobsite at all times during the progress of the construction. The Owner shall have the right to approve the superintendent. If the Contractor removes the superintendent, the Owner shall have the right to approve the replacement superintendent.

B. Contractor shall conduct weekly job site meetings or a weekly conference call with the Owner's representative to keep the Owner informed of the progress of the construction. Contractor shall provide Owner copies of minutes of any job site meetings.

C. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the construction in accordance with the Drawings and Specifications under this Agreement (except for the coordination of the Owner's separate Contractors, if any).

D. Contractor shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies, or renting any equipment to Contractor or any of its subcontractors in connection with the construction, except where Contractor is disputing its obligation to so pay.

E. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors and for any damages, losses, costs, expenses or claims resulting from such acts and omissions.

F. In no event shall Contractor contract with any party which is known to have been debarred or suspended by HUD under 24 CFR part 24.

G. Contractor Representations and Warranties. The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Agreement) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and any termination of this Agreement:

i. The Contractor, and to the best of Contractor's knowledge, its Subcontractors, are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the construction and perform all obligations hereunder;

ii. The Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor itself or through its Subcontractors required to complete the construction and perform its obligations in

accordance with the Drawings and Specifications and this Agreement, and has sufficient experience and competence to do so and all materials used will be of good quality and new unless otherwise permitted by Owner;

iii. The Contractor is authorized to do business in the State of California and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the construction;

iv. The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly authorized powers; and

v. The Contractor is a sophisticated contractor who possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and will construct the Project with the care, skill, and diligence of such a contractor.

H. Subcontractors. The Contractor shall select all subcontractors and disclose to the Owner the name, trade, and subcontract amounts for each subcontractor prior to the commencement of the construction. All subcontractors shall have the required licenses and expertise necessary to perform the proposed subcontract work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. By appropriate agreement, the Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by terms of this Agreement and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's work, which the Contractor, by this Agreement, assumes toward the Owner. Each subcontract shall, among other matters: (i) require that the work be performed in accordance with the requirements of this Agreement; (ii) require the subcontractor to carry and maintain liability insurance in accordance with this Agreement; and, (iii) shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract and that the subcontractor recognizes the rights of the Owner to take an assignment of its subcontract after termination of this Agreement by the Owner on default of the Contractor. The Contractor and each Subcontractor as applicable shall execute an Installation and Repair Guarantee.

I. Construction Bonds. Prior to commencement of construction of the Project, the Contractor shall deliver to the Owner copies of labor and material (payment) bonds and performance bonds for the construction in an amount equal to one hundred percent (100%) of the scheduled costs of construction. Said bonds shall be issued by an insurance company which is licensed to do business in California and has a rating equivalent to AAA or AA+ by an insurance company listed in the current year's Federal Register or as otherwise approved by the Owner. The labor and materials (payment) bond shall name the Owner, and the Housing Authority of Fresno County, and their Financing Partners – PNC Bank NA as additional obliges with the form of bond reasonably acceptable to such parties as co-obligees or assignees.

J. Right of Entry; Job Site Facilities. The Owner hereby grants Contractor a right to enter the Property for the purpose of construction of the Project. This right of entry may be exercised by Contractor, and its employees, agents, and subcontractors. This Right of Entry will terminate upon the sooner to occur of (i) completion of construction; or (ii) the occurrence of an event of default under this Agreement not covered within any cure or grace period.

K. Signs. Subject to prior approval of the Owner as to size, design, type and location, and to local regulations, the Contractor and its subcontractors may erect temporary signs for purposes of identification and controlling traffic. The Contractor shall furnish, erect, and maintain such signs as may be required by safety regulations and as necessary to safeguard life and property. The Contractor shall comply with CAL OSHA Standards.

L. Job Site Facilities. The Contractor may provide a jobsite trailer and portable sanitary facilities. This office will be located so as to cause no interference to any work to be performed on the site. The Contractor shall consult with the Owner with regard to location. Upon completion of the Project, or as directed by the Owner, the Contractor shall remove all such temporary structures and facilities from the site. On-site storage will be permitted, as a convenience to the Contractor, in areas designated by the Owner for such purposes. Contractor shall be responsible for all security measures required against theft and vandalism. The Contractor may, at its option and expense, rent off-site facilities for the storage and securing of its materials.

M. Safety Precautions and Programs. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the construction and for providing safe conditions for the performance of the construction. The Owner shall have no liability or responsibility for the physical condition or safety of the site or any improvements located on the site until acceptance of the construction by the Owner.

N. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: employees at the site and other persons who may be affected thereby; the construction and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

O. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

P. The Contractor shall erect and maintain, as required by existing conditions and performance of the construction, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

Q. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the construction, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall also give the Owner reasonable advance notice.

R. The Contractor shall promptly remedy damage and loss to property, caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, except damage or loss attributable to acts or omissions of the Owner.

S. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

T. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

U. When all or a portion of the construction is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the work, as necessary, from injury by any cause.

V. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the construction that caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

W. The Contractor shall secure all permits and licenses necessary for the proper execution and completion of the construction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction over the construction.

X. Contractor shall cause all work performed to be performed in compliance with (i) the construction plans and specifications approved by the City Building Department and all governmental approvals and permits; (ii) all applicable laws, ordinances, rules and regulations of federal, state, or municipal governments or agencies now in force or that may be enacted hereafter, (iii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The Contractor shall not be responsible for any failure of the Architect's plans and specifications to comply with applicable law, ordinances, rules and/or regulations of any agency or other governmental entity with authority over the Project.

Y. Contractor shall guarantee all work under the Contract against all defects of material and/or workmanship for a period of One (1) years from the date of the Notice of Completion and Contractor, shall repair, remove and replace, all defective material and/or workmanship and any work which may be displaced in doing so, at no cost to the Owner, during such term.

Z. Contractor shall comply with all State and Local safety requirements during the progress of the Contract, and shall report in writing within twenty-four (24) hours to the Owner any injury to employees at the site of the Project. **No loud music, vulgar language, drugs, or alcohol shall be allowed on the job site.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project and shall take all reasonable precautions and steps to prevent damage, injury, or loss to all employees and other persons, all work on the Project and materials and equipment to be incorporated therein, and other property on or off the worksite. Contractor shall promptly remedy all damages or loss caused in whole or in part by Contractor, any subcontractor, or anyone directly or indirectly employed by them or any person or entity at the work site.

AA. Intentionally Omitted.

BB. Department of Labor Notification. Within ten (10) calendar days of contract award (including subcontracts) for each contract of \$10,000.00 or more, the Owner is required to send a notice of contract award to the Regional Office of Federal Contract Compliance Programs of the Department of Labor. This notification is required by Executive Order 11246, as amended, and shall include the name, address, and telephone number of the contractor/subcontractor; the employer identification number; the dollar amount of the contract; the estimated construction start and completion dates; and the project number(s) and community in which the project(s) is located. The above information shall be submitted to

the Owner, by the Contractor, within two (2) working days of receipt of such information as it applies to subcontractors.

CC. Contractor shall, upon written request, permit and facilitate, and shall require its subcontractors to permit and facilitate, observation and inspection at the construction site by the Owner through its officers, agents, or employees and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement including but not limited to safety and labor compliance. No item for which inspection is required shall be covered with other materials without prior inspection of that item. The Contractor shall make arrangements for inspections at least 48 hours prior to the time inspection is required. The Owner shall perform all inspections in a manner so as not to unreasonably delay the work. Any review or inspection undertaken by the Owner with reference to the construction is solely for the purpose of determining whether Contractor is properly discharging its obligations to the Owner, and should not be relied upon by Contractor or by any third parties as a warranty or representation by the Owner as to the quality of the design or construction of the Project or compliance with applicable laws.

DD. Upon the request of the Owner, the Contractor shall provide the Owner with reproducible copies of all drawings, plans and other documents pertaining to the construction of the Project to facilitate HUD, Owner, and lenders review.

EE. Contractor shall also take all steps reasonably necessary to comply with Owner's Storm Water Pollution Prevention Plan ("SWPPP") and/or with any enforcement agency's rules, ordinances and/or regulations regarding storm water.

FF. Contractor shall protect and safeguard survey monuments and stakes and will be responsible for coordinating its activities with the surveyor.

GG. Contractor shall survey and mark the boundary lines. The Owner is not responsible for and makes no representation concerning the accuracy of any engineering studies, surveys, survey monuments, and/or testing performed by any entity or person. Contractor is responsible for scheduling and paying for all necessary testing, surveys, and/or engineering.

ARTICLE III: CONDITIONS PRECEDENT TO COMMENCEMENT OF CONSTRUCTION

1. The parties agree that Owner is under none of the obligations set forth in this Agreement unless and until the satisfaction of the following conditions precedent:

A. Contractor has furnished the Owner with evidence of the bonds as set forth in this Agreement.

B. The Owner has received written approval from HUD of all evidentiary documents pertaining to the construction, and of this Contract.

C. Contractor has executed and delivered to Owner all documents, instruments, and policies required by the Owner and HUD pursuant to this Agreement.

D. Contractor has furnished the Owner with evidence of all the insurance coverage meeting the requirements of this Agreement.

E. The Contractor has secured all necessary permits and licenses.

F. The Board of Commissioners of the Housing Authority of Fresno County has ratified and approved this Contract by resolution.

G. The Owner has obtained financing that it finds acceptable in its sole and absolute discretion.

ARTICLE IV: CHANGES TO THE WORK

1. Any alterations or deviations from the scope of work, including but not limited to any alteration or deviation involving additional material and/or labor costs, will be permitted only by a written change order signed by both parties before the costs are incurred. Should Contractor believe there is a design error or similar error in the Contract Documents, Contractor shall not be authorized to alter or deviate from the scope of work and Contract Documents, unless carried out pursuant to a written and signed change order. Any uncertainty or inconsistency in the plans or specifications shall be immediately brought to the attention of the Owner. Any such uncertainty or inconsistency shall be resolved and performed as directed by the Owner. Non-performance because of alleged defective Contract Documents will not be permitted unless brought to the attention of the Owner before commencement of the work.

2. The description of the work to be performed or material to be furnished by Contractor by reference to the Contract Documents will not be deemed to limit the Contractor's obligation to perform only such work or furnish only such materials as are described in that section or sections if the work or material that is within the general description of the section or sections is required of the Contractor by trade practice or by any other provision or section of the drawings or specifications or Contract Documents.

ARTICLE V: COMMENCEMENT OF WORK AND SUBSTANTIAL COMPLETION

1. Contractor agrees to proceed with the work promptly and at all times carry out the work continuously with all reasonable speed in such a manner as not to delay the Project and to complete the entire work according to the Project schedule. Time is of the essence. Contractor shall diligently prosecute construction of the project to completion, and shall cause the Substantial Completion of the construction no later than Three Hundred Sixty Five (365) calendar days after the issuance of the Notice to Proceed (the "Contract Time"). "Substantial Completion" is defined as the work being sufficiently completed so that it may be lawfully used for its intended use and the applicable government authorities have certified the work and allow it to be used for its intended purpose after inspection. For each day following the expiration of the Contract Time deadline that Contractor does not achieve completion of the entire work, Contractor shall pay Owner damages in the agreed amount of one thousand dollars (\$1000.00) per calendar day, each party hereto recognizing that actual damages for such delay would be extremely difficult or impossible to determine.

2. Upon Substantial Completion, Contractor shall submit a written certification form to the project engineer stating the work has been performed in accordance with this Contract, including all plans, specifications, and change orders. Once (1) the project engineer has certified that the work has been performed pursuant to the Contract and has reached Substantial Completion, (2) the Owner has inspected the work and determined that the work has been performed according to the Contract and has reached Substantial Completion, and (3) at the Owner's option and cost, an independent third party has verified that work has been performed according to the Contract and has reached Substantial Completion; then the Owner shall accept the work and certify in writing that the construction of the Contract is substantially

complete (the "Acceptance Certificate"). The Parties agree that such inspections and verifications will be completed within fourteen (14) days of Owner's receipt of the Contractor's submission of the written certification form stating that the work has been completed.

ARTICLE VI: OWNER'S RIGHT TO STOP THE WORK

1. If the Contractor fails to correct any poor work and/or any defective work or fails to carry out the construction of the Project in accordance with this Agreement or its Change Orders, the Owner by a written order, may order the Contractor to stop the work or any portion thereof until the cause for such order has been eliminated.

ARTICLE VII: OWNER'S RIGHT TO CARRY OUT THE WORK

1. If the Contractor defaults or neglects to carry out the work in accordance with this Agreement and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such defects or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy, the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued, deducting from the payments then or thereafter due the Contractor, the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference immediately to the Owner.

ARTICLE VIII: SECTION 3 COMPLIANCE

1. The Contractor shall comply with Section 40 of the General Conditions regarding Section 3. The approved plan for complying with Section 3 of the Housing and Urban Development Act of 1968, as amended, and regulations thereunder, attached as Exhibit H to this Agreement, was done to ensure that low-income community residents are utilized in development activities to the maximum extent feasible and to ensure that the Contractor and subcontractors do the same (the "Section 3 Plan"). The Contractor shall be responsible for implementation of the Section 3 Plan as it pertains to construction of the Project. All Section 3 requirements will be coordinated through the Owner. The Contractor's efforts under the Section 3 Plan shall be documented monthly in reports required by the Owner in a form reasonably acceptable to the Owner. The Contractor will make affirmative outreach efforts to publicize training, employment and subcontracting opportunities. Notice will be put in local newspapers and flyers will be distributed as appropriate. Local unions, elected officials and training organizations shall also be notified. "Section 3 Certification" shall mean the Contractor's certification regarding Section 3 compliance (Exhibit I).

ARTICLE IX: EQUAL OPPORTUNITY

1. The Contractor, for itself and its successors and assigns, and transferees agrees that the construction shall comply with the requirements of Section 39 of the General Conditions regarding Equal Employment Opportunity.

ARTICLE X: MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION

1. The Contractor, for itself and its successors and assigns, and transferees agrees that in the construction of the Project, it shall comply with the requirements of Section 38 of the General Conditions regarding Subcontracting with Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms. Attached to this Agreement as Exhibit L is the Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications. It is the policy of the Owner to take positive steps to maximize the utilization of minority and women business enterprises in all contract activity administered by the Owner.

ARTICLE XI: HAZARDOUS MATERIALS

1. Contractor shall not permit any hazardous material or substance to be brought to or used on the property except to the extent such hazardous material or substance is necessary to and customarily used in the construction of projects like the instant Project. Any hazardous material or substance brought or used on the Property by the Contractor, any subcontractor, any material supplier, or any entity for whom any of them is responsible, shall be used, stored and disposed of in compliance with all applicable laws related to such hazardous materials or substances. Any damage to the Project and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or Sub-subcontractors; and other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, resulting from the improper storage or use of hazardous materials or substances, shall be remedied by the Contractor at its sole cost and expense in accordance with applicable laws. The Contractor shall provide the Owner notice of any release of hazardous materials or substance at the property. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the property by the Contractor, any subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to import any fill that are hazardous, toxic or made up of any items that are hazardous or toxic.

ARTICLE XII: CONTRACT SUM

1. The Owner shall pay the Contractor the Contract Sum for the Contractor's performance of the Contract. The Contract Sum shall be **XXXX Dollars and Zero Cents (\$X,XXX,XXX.XX)**. The Contract Sum is based on the Contractor's Cost Proposal response to IFB No. BXXXXX.

ARTICLE XIII: PAYMENTS

1. PROGRESS PAYMENTS

A. Disbursement Request Process.

i. Submittal of Disbursement Requests. The Owner shall provide funding for the construction of the Project based upon monthly Disbursement Request from Contractor in an amount equal to ninety percent (90%) of the requested payment amount, and shall retain the balance from the payment in accordance with Article 13.2 below (the "Final Payment"), all subject to the requirements set forth in Section 27 of the General Conditions.

ii. Form of Disbursement Request. In addition to the requirements set forth in Section 27 of the General Conditions (including Contractors certification requirement), any Disbursement Request shall: (i) set forth the proposed use of funds consistent with Budget; (ii) contain sufficient detail and with sufficient supporting documentation to permit the Owner to confirm that the work to be funded by the draw request has been performed, and that the Owner may accept such work in accordance with the guidelines established by HUD for disbursement of such funds; (iii) contains conditional lien waivers; and (iv) contain a statement of the total costs incurred by the Contractor since the date of the Contractor's last Disbursement Request, and the amount of those cost paid by the Contractor.

iii. Payment by the Owner. Provided that the Architect approves the Disbursement Request by the last business day of the month and the required information is sent and approved by the Owner's lender by the fifth (5th) business day of the following month, then the Owner shall pay each approved Disbursement Request by the twenty-fifth (25th) day of the month following the month in which the architect approves the Disbursement Request. The Owner shall have the right, but not the obligation, to make disbursements directly to subcontractors, suppliers, consultants, or other third parties performing work on the Project when the Owner deems such direct payments advisable, however, this provision in no way is intended to waive or to release Contractor from its responsibility to make timely payment to subcontractors or other parties performing work on the Project.

B. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

C. Withholding of Payment Due to Lack of Payroll Compliance. Notwithstanding the above, if the Contractor fails to submit the payroll information required pursuant to this Agreement, the Owner may withhold one hundred percent (100%) of any payment due the Contractor.

2. FINAL PAYMENT

A. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

i. The Contractor has fully performed the Contract and corrected all punch list items, except for Contractor's obligation to satisfy other requirements, if any, It is agreed that Owner and Contractor shall review the punch list items together in good faith and mutually agree as to the estimated value thereof. Owner shall release Final Payment to Contractor less the mutually agreed value of the punch list items with the remaining balance released to Contractor within thirty (30) days following Owner's approval and acceptance of corrected punch list work; and

ii. A final Certificate for Payment has been issued by the Architect.

B. The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment.

C. Notwithstanding the foregoing, the Owner shall not be obligated to make the disbursements or take any other action under this Agreement unless the following conditions are satisfied prior to such disbursement:

i. There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

ii. All labor has been performed and material supplied and incorporated into the construction in a good work person-like manner consistent with this Agreement.

iii. All persons, firms and corporations, including all laborers, material persons, suppliers and subcontractors who have furnished equipment, supplied materials or performed work for or in connection the construction (the "Potential Claimants"), have been paid or will be paid in full out of the remaining retained percentage; and those persons, firms and corporations have submitted their final statements with an conditional waiver of all rights. The Contractor shall make these waivers available for inspection by the Owner. In the event a dispute has arisen between the Contractor and one of the parties listed above which prevents the Contractor from obtaining the waiver of rights from that party, the Contractor may satisfy the requirements of this subsection by supplying a payment bond issued by a surety licensed to do business in the State of California and acceptable to the Owner to remove the effect of any claim against the Project or the property and agree to defend and indemnify the Owner against all actions filed by persons who have supplied materials to or performed work for or in connection to the Project.

iv. All portions of the Project requiring inspection by any governmental authority have been inspected and approved by such authority and all requisite certificates of occupancy, approvals, licenses and permits if applicable, have been issued.

v. The Owner has received one complete set of "as built" drawings.

vi. The Owner has received operating manuals and assignments of warranties of the Contractor, all subcontractors and materialpersons.

vii. Thirty-five (35) days have elapsed from the Owner's recordation of a notice of completion in the office of the appropriate County Recorder which notice the Owner shall record within ten (10) days of completion of the work.

viii. All items on the punch-list related to the Project have been completed and accepted by the Owner, and the Owner has issued an Acceptance Certificate pursuant to the General Conditions.

ix. Notwithstanding the above, a portion of the Retention Amount may be released to certain Potential Claimants performing work early in the construction process (i.e. grading or foundation work) subject to the approval of the Owner in its reasonable discretion, prior to satisfaction of all conditions set forth herein if such Potential Claimants have provided the Owner unconditional releases.

ARTICLE XIV: SCOPE OF WORK

1. The following is included in the scope of work for the approximately XX residential units:

See exhibits set forth in Article I.

ARTICLE XV: LIST OF SUBCONTRACTORS TO BE USED ON THE PROJECT - Attached Exhibit O

1. Subcontractors to be used are as follows:

Grading and Paving	Name
Site Utilities	Name
Landscaping	Name

Building Concrete	Name
Carpentry	Name
Insulation	Name
Roofing	Name
Lath & Plaster	Name
Drywall	Name
Flooring	Name
Painting	Name
Plumbing	Name
Fire Sprinklers	Name
HVAC	Name
Electrical	Name
Concrete (site)	Name
Gypcrete	Name
Lighweight Concrete	Name
Masonry	Name
Finish Carpentry	Name
Waterproofing	Name
Sheet Metal	Name
Cabinetry	Name
Elevator	Name
Fencing	Name
Carports	Name

ARTICLE XVI: ENUMERATION OF CONTRACT PLANS

1. The applicable construction plans, except for modifications issued after execution of this Agreement, are incorporated by reference into this Agreement as if fully set forth herein, and includes but are not limited to:

A. The Specifications and Project Manual, as revised, dated XX/XX/XXXX.

2. The Drawings are as follows:

	Name	Title	Date
1.	Name	Civil Plans	TBA
2.	Name	Architectural Plans	TBD
3.	Name	Structural Plans	TBD
4.	Name	Mechanical, Plumbing, &Electrical Plans	TBD
5.	Name	Landscaping Plans	TBD

ARTICLE XVII: INSURANCE, HOLD HARMLESS & INDEMNITY

1. INSURANCE REQUIREMENTS

A. The Contractor shall, and shall cause any subcontractors working on the Project to maintain insurance of the types described in Exhibit F. The requirements set forth in Exhibit F supersede those set forth in Section 36 of the General Conditions.

B. To the extent that it does not contradict the terms of Exhibit F, Contractor shall, upon execution of this Agreement and prior to commencing any work or services with regard to the Project, procure and maintain the following minimum kinds of insurance:

i. Workers' Compensation and Employers' Liability: Contractor shall secure Workers' Compensation insurance to its employees in accordance with Section 3700 of the Labor Code of California, as well as verify that all subcontractors employed on the Project are appropriately insured.

ii. Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit and Five Million Dollars (\$5,000,000) in the aggregate, for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations and Pollution Legal Liability. Such insurance coverage shall:

a. Include the Owner; other entities as listed in EXHIBIT N; the Housing Authorities of the City and County of Fresno, their officials, commissioners and employees as insured. The coverage shall contain no special limitations on the scope of protection afforded to the above-listed insureds.

b. Be primary and non-contributing with respect to any insurance or self-insurance programs covering the Owner, the Housing Authority of the City of Fresno, The Housing Authority of Fresno County, their commissioners, officers and employees.

c. Provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, the Housing Authority of the City of Fresno, The Housing Authority of Fresno County, their officers, commissioners or employees.

d. Include all of Contractor's subcontractors as insured under its policies or furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

iii. Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit and Two Million Dollars (\$2,000,000) in the aggregate, annually, for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Contractor does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

iv. Contractor is required to provide builder's risk insurance and the Owner will reimburse contractor for the cost.

C. Any subcontractor working on the development will maintain insurance of the types and in at least the minimum amounts described above, except that the limit of liability for commercial general liability insurance for subcontractors whose contracts do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) shall be at least Five Hundred Thousand Dollars (\$500,000), and the limit of liability for commercial general liability insurance for subcontractors whose contracts exceed Two Hundred Fifty Thousand Dollars (\$250,000) shall be at least Two Million Dollars (\$2,000,000) provided, however, the Owner, the Housing Authority of Fresno County, shall consider a lower limit for a subcontractor with a

contract between Two Hundred Fifty Thousand Dollars (\$250,000) and One Million Dollars (\$1,000,000) if the subcontractor demonstrates to the satisfaction of the Owner, the Housing Authority of Fresno County, that it is unable to obtain insurance at the \$2,000,000 limit. Such insurance shall meet all of the general requirements set forth above.

D. In addition to the above insurance requirements, the Contractor shall:

i. Prior to commencement to work on the Project, furnish the Owner and the Housing Authority of Fresno County, with properly executed certificates of insurance which shall clearly evidence all insurance required herein.

ii. Provide certified copies of endorsements and policies to the Owner and the Housing Authority of Fresno County, in addition to certificates of insurance.

iii. Replace certificates, policies and endorsements for any such insurance expiring prior to completion of work on the Project.

iv. Place such insurance with insurers approved to do business in California and having a rating of A or higher by Standard and Poor or have a Best's Key Rating of at least an "A" and a Best's Key Class of at least a "IX" (nine).

v. Prior to commencement of work, Contractor shall provide Owner and those listed in Exhibit N an original ACORD 27 or ACORD 28 (evidence of insurance) for all insurance coverage.

vi. Policy premiums may not be financed or paid in installments to insurance carriers; all must be paid in full. All policies and renewals thereof are to be written for not less than one year and policy numbers must be clearly identified.

vii. All liability insurance policies must provide for claims to be made on an occurrence basis.

viii. If any of the insurance policies are part of a "blanket" or overall insurance package, Contractor shall provide Owner and those listed in Exhibit N with an endorsement stating that coverage will not be affected by the failure to pay any portion of the premium which is not allocated to the Project or by any other action not related to the Project which would otherwise permit the insurer to cancel the coverage.

ix. For all coverage, the maximum deductible shall be no more than ten thousand dollars (\$10,000.00); other than windstorm, where the deductible shall not exceed fifty thousand dollars (\$50,000.00).

E. The required insurance shall be provided under an occurrence form, and Contractor shall maintain the coverage described in subsections (a) through (e) continuously so long as the Project is not accepted by Owner. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

F. Commercial General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as an additional insured the Owner, the Housing Authority of Fresno County, and its officers, agents, employees and members of the Authority Commission.

G. All policies shall contain (i) the agreement of the insurer to give the Owner; those listed in Exhibit N; and the Housing Authority of Fresno County, notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Owner, the Housing Authority of Fresno County; (iii) a provision that no act or omission of the Contractor shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the Owner, the Housing Authority of Fresno County, and its authorized parties in connection with any loss or damage thereby insured against.

H. The insurance policies shall name Owner, the Housing Authority of Fresno County, those listed in Exhibit N, their agents, officers, and employees, as additional insureds. Certificates evidencing compliance with each provision of the above insurance requirements shall be provided to Owner within fourteen (14) days of the execution of this Agreement. Further, all insurance policies shall contain endorsement affording notice to Owner and the Housing Authority of Fresno County, those listed in Exhibit N, and prior to cancellation, non-renewal or amendment (except amendment naming Additional Insureds). Exclusions for subsidence, collapse and explosion shall be deleted in all policies. All coverage shall be placed with an insurance company duly admitted in the State of California and the insurance carriers must have a rating of A or higher by Standard and Poor or have a Best's Key Rating of at least an "A" and a Best's Key Class of at least a "IX" (nine). The insurance coverage required shall be of sufficient type, scope, and duration to ensure coverage for the Owner for liability related to any manifestation date with the applicable statutes of limitation and/or repose, which pertain to any work performed in relation to the Project.

I. The work and services performed by the Contractor and its sub-contractors (and sub-subcontractors, etc.) employees, and agents shall be at the risk of the Contractor exclusively. To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor's sole expense) and hold harmless the Owner, the Housing Authority of the City of Fresno, the Housing Authority of Fresno County, and their members, related entities, officers, directors, shareholders, employees, successors, and assigns (Indemnified Parties), from and against all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys fees and costs with attorneys of Owner's reasonable choice, and expert consultant/witness fees and costs) which arise or are in any way connected to the work performed, materials furnished, or services provided under the Agreement, change orders thereto, and/or Contract Documents by Contractor or its agents and subcontractors. Contractor's foregoing indemnity and hold harmless agreement shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or its subcontractors (or their agents, sub-subcontractors or employees). Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of the Indemnified Parties, whether active or passive. Contractor shall keep and deliver the premises free and clear of all claims of liens for labor or materials used in performance of the work

J. Contractor's indemnification and defense obligations hereunder shall extend to claims occurring after the Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully barred by applicable laws.

ARTICLE XVIII: BONDS

1. As stated above, Contractor shall furnish performance and payment bonds to Owner, each in an amount at least equal to the contract price as security for the faithful performance and payment of all of Contractor's obligations. These bonds shall remain in effect at least thirty (30) days after the date when final payment becomes due.

2. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the project is located, Contractor shall within five (5) days thereafter substitute another bond and surety, both of which must be acceptable to Owner and the Housing Authority of Fresno County.

ARTICLE XIX: MATERIAL AND CLEAN UP

1. Contractor shall be responsible for the work, the property upon which the work is located, and/or materials until completion, final acceptance of the Contract, and release of responsibility by the Owner. Contractor shall be responsible to keep all debris from the work on the building site. Contractor shall bear the risk of any loss or damage until such acceptance. In the event of loss or damage, Contractor shall proceed promptly to make repairs or replacement of the damaged work, property, and/or material at its own expense. Contractor waives all rights Contractor might have against Owner for loss or damage to Contractor's work, property, or material.

ARTICLE XX: DEFAULT; REMEDIES

1. Events of Default by Contractor. The Contractor shall be in default under this Agreement, if the Contractor, after five (5) days notice and opportunity to cure:

A. Refuses or fails to prosecute the construction of the Project, or any separable part of it, with the diligence that will insure its substantial completion within the contract time or any extension thereof, or fails to complete the construction within this time;

B. Is in substantial breach of any provision of this Agreement including, but not limited to, substantially falling behind schedule;

C. Is adjudged bankrupt or there is a general assignment for the benefit of creditors or the appointment of a receiver due to insolvency;

D. Refuses or fails to supply sufficient skilled workmen or materials;

E. Fails to make prompt payment to subcontractors for materials or labor; or

F. Repeatedly or materially disregards the applicable laws, local ordinances, or Authority instructions.

2. Remedies. The occurrence of any default by Contractor shall give the Owner the right to take whatever action at law or in equity as may appear reasonably necessary to enforce performance or observance of any obligations, agreements, or covenants under this Agreement, including without limitation: (i) termination of this Agreement, (ii) without liability, taking possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

(iii) acceptance of assignment of subcontracts; and, (iv) completion of the construction of the Project by whatever reasonable method the Owner may deem expedient.

3. In the event of a termination, the Owner shall immediately serve written notice on the surety and the Contractor. The surety shall have the right to take over and perform the construction of the Project if within 10 days of receiving the notice, it so notifies the Owner and commences work.

4. In the event of termination, the Contractor shall not be entitled to receive any further payment until the construction of the project is completed. If the unpaid balance of the contract sum exceeds the expense of completing the work, plus compensation for additional managerial and administrative services, the excess shall be paid to the Contractor. If the expense exceeds the unpaid balance, the Contractor and surety shall be liable for the difference to the Owner.

5. No right, power, or remedy given to the Owner by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Owner by the terms of any such instrument, or by any statute or otherwise against Contractor and any other person. Neither the failure nor any delay on the part of the Owner to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the owner of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE XXI: TERMINATION FOR CONVENIENCE

1. The Owner and the Housing Authority of Fresno County shall have the right to terminate this Agreement for convenience, in its sole and absolute discretion, at any time. Should either so terminate for convenience, then Contractor shall cease work immediately upon written notification and will be paid only for work done to the date of such notice, including all amounts for insurance, supervision, and Contractor's fee as determined by the proportion of the overall percentage of the project completion at the time of the notice of termination.

ARTICLE XXII: PARTIES' DISPUTES

1. All disputes arising under or relating to or resulting from this Agreement, including any claims for damages for the alleged minor or material breach of this Agreement, or that otherwise arise between the parties (and/or their respective agents, employees, parent or subsidiary entities, etc.) shall be exclusively resolved under this Article. This Article supplements Section 31 of the General Conditions.

A. Written Claims to be Submitted to Contracting Officer. All claims by Contractor shall be made in writing and submitted to the Owner's representative for a written decision.

B. Notice of Decision or Decision Date. The Owner's representative shall, within fifteen (15) days after receipt of the request, decide the claim or notify Contractor of the date by which the decision will be made. In no event shall the Owner's representative render a decision later than sixty (60) days from the receipt of the request.

C. Effect of Owner's Representative's Decision. The Owner's representative's decision shall be final unless Contractor submits a demand for arbitration within the applicable statute of limitations, in accordance with terms set forth below.

D. Contractor's Duty to Perform Pending Claim Resolution. Contractor shall proceed diligently with performance of this Agreement and with performance of written instructions of the Owner, pending final resolution of any request for money relief, claim, appeal, or action arising under or relating to or resulting from the Agreement or otherwise between the parties; and while all disputes are being resolved by arbitration the Contractor shall comply with any decision and instruction of the Owner.

E. Binding Arbitration of Disputes; Prior Mediation.

i. 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 or otherwise between the parties thereto (and/or their respective agents, employees, parent or subsidiary entities, etc.), shall not be litigated in any federal or state court or before any state, federal or administrative agency, and shall not be litigated before the Federal or State Court, 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.

ii. Notwithstanding the foregoing, it is hereby agreed and understood that, in the event that Contractor breaches or threatens to breach this Agreement, the Owner 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 Contractor performance under this Agreement, pending the results of the aforementioned arbitration proceeding.

iii. Further, notwithstanding the foregoing, it is agreed that prior to appearing before and conducting the aforementioned binding arbitration hearing, the parties shall promptly 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.

iv. 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.

v. Notice. BY EXECUTING THIS CONTRACT YOU ARE EACH AGREEING TO HAVE ANY AND ALL DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 5.8. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS ARTICLE, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THE ARBITRATION PROVISIONS OF THIS SECTION IS VOLUNTARY.

Dated: _____

OWNER: _____

Dated: _____

CONTRACTOR: _____

ARTICLE XXIII: MISCELLANEOUS PROVISIONS

1. The Owner's representative is:

Preston Prince, CEO/Executive Director
c/o Housing Authority of Fresno County California
1331 Fulton Mall
Fresno, California 93721

2. The Contractor's representative is:

3. Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

4. Contractor shall provide any information reasonably requested by the Owner in connection with the Project, including (but not limited to) any information required by HUD in connection with Contractor's use of the public funds.

5. Contractor shall comply with all applicable state and federal laws, rules and regulations, including but not limited to the requirements of the following, as the same may be amended from time to time:

A. The Fair Housing Act, 42 U.S.C. 3601-19, and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; the fair housing poster regulations, 24 CFR Part 110, and advertising guidelines, 24 CFR Part 109;

B. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and regulations issued thereunder relating to nondiscrimination in housing, 24 CFR Part 1;

C. Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 CFR Part 146;

D. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 CFR Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-89, and regulations issued thereunder, 28 CFR Part 36; and

E. The Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

F. Recordkeeping, Audit & Reporting Requirements. Contractor's books and records pertaining to its performance under this Agreement shall be kept in accordance with generally accepted accounting principles and as required by the Applicable Public Housing Requirements, and shall be retained for at least three (3) years after the Owner makes final payment to Contractor under this Agreement and all other pending matters are closed. Contractor agrees to grant a right of access to the Owner, HUD, any agency providing funds to Owner, the Comptroller General of the United States, and any of their authorized representatives, with respect to any books, documents, papers, or other records pertinent to this Agreement in order to make audits, examinations, excerpts, and transcripts. The Owner shall notify Contractor of any records it deems insufficient. Contractor shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Owner in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Contractor shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. The Contractor agrees to include in first-tier subcontracts under this Agreement a clause with substantially the same recordkeeping, audit and reporting requirements as set forth herein.

i. Access for Disputed Matters. The period of access and examination for records relating to (1) appeals under the Dispute Section of this Agreement; (2) litigation or settlements of disputes arising from the performance of this Agreement; or (3) costs and expenses of this Agreement to which the Owner, HUD or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

ii. Audit. The Owner, HUD, any agency providing funds to Owner, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right to perform any audit of Contractor's finances and records related to its performance under this Agreement, including without limitation, the financial arrangement with anyone Contractor may delegate to discharge any part of its obligations under this Agreement.

G. Interest of Members of Congress. No Member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

H. Interest of Member, Officer, or Employee and Former Member, Officer, or Employee of Owner. No member, officer, or employee of the Owner, no member of the governing body of the locality in which the Project is situated, no member of the governing body by which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, shall, during his or her tenure, or for one year thereafter or such longer time as the Housing Authorities' Code of Ethics may require, have any interest, direct or indirect, in this Agreement or the proceeds thereof, unless the conflict of interest is waived by the Owner and by HUD.

I. Lobbying Activities. The Contractor shall comply with 31 USC 1352 which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, loan, or cooperative agreement. The Contractor further agrees to comply with the requirement of such legislation to furnish a disclosure (OMB Standard Form LLL) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with a Federal contract, grant, loan, or cooperative agreement, which payment would be prohibited if made from Federal appropriated funds.

6. This document contains the full and entire agreement between the parties hereto. No prior oral or written agreement, promise, representation, or warranty not included in this document regarding this Project or any other project, land, or construction exists and/or is relied upon by the Contractor, Owner, and/or Housing Authorities or any of its employees, agents, or subsidiary entities including but not limited to... This document contains the sole and only agreement between the parties hereto. Each party has relied solely upon its own examination of this agreement and the property, its counsel or its advisors and its own due diligence. This document may only be modified in a subsequent writing executed by both Contractor and Owner.

7. Non-Liability of Owner Officials, Employees and Agents. No member, official, employee or agent of the Owner or Housing Authorities shall be personally liable to Contractor in the event of any default or breach by the Owner or for any amount which may become due to Contractor or its successor or on any obligation under the terms of this Agreement.

8. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

9. Conflict of Interest. Contractor covenants that neither it nor any of its directors, officers, partners or employees has any interest, nor shall acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed by it.

10. The parties acknowledge that performance of this Agreement by the Owner, and the transactions contemplated hereby, is contingent upon the review and approval by HUD. The Contractor and the Owner agree to cooperate in order to obtain HUD's written approval of this Agreement. Nothing herein shall be understood to authorize or obligate the Owner to act in the absence of required HUD approvals, and the parties acknowledge that HUD's approval of this Agreement will not constitute approval of particular transactions which by their nature require specific HUD approval following a submission of particulars.

ARTICLE XXIV: SUBCONTRACTORS

1. By written agreement, Contractor will require each subcontractor to be bound to the Contractor by the terms of this Agreement, including but not limited to the arbitration provisions set forth herein, and to assume toward the Contractor all obligations and responsibility which the Contractor owes to the Owner. Where appropriate, Contractor will require the subcontractor to enter into substantially the same agreement with sub-subcontractors.

ARTICLE XV: INDEMNIFICATION

1. To the maximum extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless Owner, the Partners of Owner, the Housing Authorities of the City and County of Fresno, and Owner's employees, agents, apparent and subsidiary entities and affiliates (collectively the "Indemnitees") from and against any and all losses, damages, liabilities, demands, expenses, costs, debts, causes of action, suits, penalties, fines, judgments, claims and liens (including mechanics' liens and stop notices), consulting costs, and court costs (Collectively, "Claims"), for injury (bodily injury and/or personal injury) to or death of persons (including, without limitation, any employee of Contractor or an Indemnatee), damage to property, including loss of, or loss of use of property, or other loss arising out of, or relating in any way, directly or indirectly, to: (i) the construction of the Project; (ii) Contractor's breach of or default of its obligations under this Agreement; or (iii) Contractor's or a subcontractor's, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, presence, or activities conducted, in, at or about the property. Contractor's obligations under this section shall apply regardless of the nature of Contractor's conduct, acts or omissions. Actual or alleged negligence or fault on the part of Contractor is not a prerequisite to Indemnitees' rights to defense and indemnification hereunder. Contractor's obligations under this section shall apply regardless of the passive or active negligence of Indemnitees and regardless of whether liability without fault is imposed or sought to be imposed on Indemnitees, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of the Agreement.

2. The Contractor's indemnity obligations under this section shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorney's fees for counsel of Owner's choice), and punitive damages (if any) arising out of or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the construction of the Project by the Contractor, a subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the construction of the Project, and (iii) failure to secure permits, fees, approvals, licenses, and inspections as required under this Agreement, or any violation of any permit or other approval of a public authority applicable to the construction of the Project, by the Contractor, a subcontractor, or any person or entity for whom either is responsible.

3. In claims against any person or entity indemnified under this section by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

4. The provisions of this section shall survive the termination or expiration of the Agreement.

This Agreement is entered into as of the day and year first written above.

OWNER

California limited partnership

CONTRACTOR

By: _____

By: Housing Authority of Fresno County,
California, a public body corporate and politic its
sole member

By: _____

Name: Preston Prince

Its: CEO/Executive Director

DRAFT

EXHIBIT A
Site Plan

DRAFT

EXHIBIT B
Construction Schedule

DRAFT

EXHIBIT C
Contractor Schedule of Values, Qualifications & Exclusions

DRAFT

EXHIBIT D
List of Drawings and Specifications

1. The applicable construction plans, except for modifications issued after execution of this Agreement, are incorporated by reference into this Agreement as if fully set forth herein, and includes but are not limited to:

A. The Specifications and Project Manual, as revised, dated 02/24/14.

2. The Drawings are as follows:

	Name	Title	Date
1.	Name	Civil Plans	TBA
2.	Name	Architectural Plans	TBA
3.	Name	Structural Plans	TBA
4.	Name	Mechanical, Plumbing, &Electrical Plans	TBA
5.	Name	Landscaping Plans	TBA

EXHIBIT E
HUD form 5370, General Conditions for Construction Contract

DRAFT

EXHIBIT F
Subcontractor Insurance Requirements

1. Workers' Compensation insurance to all employees in accordance with Section 3700 of the Labor Code of California.
2. Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit and Five Million Dollars (\$5,000,000) in the aggregate, for Bodily Injury and Property Damage, including coverage's for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations and Pollution Legal Liability. Such insurance coverage shall:
 - a. Include the Owner; those listed in Exhibit N; the Housing Authorities of the City and County of Fresno, their officials, commissioners and employees as insured. The coverage shall contain no special limitations on the scope of protection afforded to the above-listed insureds.
 - b. Be primary and non-contributing with respect to any insurance or self-insurance programs covering the Owner, the Housing Authorities of the City and County of Fresno, their commissioners, officers and employees.
 - c. Provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, the Housing Authorities of the City and County of Fresno, their officers, commissioners or employees.
3. Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit and Two Million Dollars (\$2,000,000) in the aggregate, annually, for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the subcontractor does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.
4. The limit of liability for commercial general liability insurance for subcontractors whose contracts do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) shall be at least Five Hundred Thousand Dollars (\$500,000), and the limit of liability for commercial general liability insurance for subcontractors whose contracts exceed Two Hundred Fifty Thousand Dollars (\$250,000) shall be at least Two Million Dollars (\$2,000,000) provided, however, the Owner, the Housing Authority of the County of Fresno, shall consider a lower limit for a subcontractor with a contract between Two Hundred Fifty Thousand Dollars (\$250,000) and One Million Dollars (\$1,000,000) if the subcontractor demonstrates to the satisfaction of the Owner, the Housing Authority of the County of Fresno, that it is unable to obtain insurance at the \$2,000,000 limit.
5. Prior to commencement to work on the Project, subcontractor shall furnish the Owner and the Housing Authority of the County of Fresno with properly executed certificates of insurance which shall clearly evidence all insurance required herein and provide certified copies of endorsements and policies to the Owner, the Housing Authority of the County of Fresno, in addition to certificates of insurance.

Subcontractor shall replace certificates, policies and endorsements for any such insurance expiring prior to completion of work on the Project. Prior to commencement of work, subcontractor shall provide Owner an original ACORD 27 or ACORD 28 (evidence of insurance) for all insurance coverage.

6. All insurance shall be placed with insurers approved to do business in California and having a rating of A or higher by Standard and Poor or have a Best's Key Rating of at least an "A" and a Best's Key Class of at least a "IX" (nine).

7. Policy premiums may not be financed or paid in installments to insurance carriers; all must be paid in full. All policies and renewals thereof are to be written for not less than one year and policy numbers must be clearly identified.

8. All liability insurance policies must provide for claims to be made on an occurrence basis.

9. For all coverage, the maximum deductible shall be no more than ten thousand dollars (\$10,000.00); other than windstorm, where the deductible shall not exceed fifty thousand dollars (\$50,000.00).

10. The required insurance shall be provided under an occurrence form, and subcontractor shall maintain the coverage described in subsections (a) through (e) continuously so long as the Project is not accepted by Owner. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

11. Commercial General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as an additional insured the Owner, the Housing Authorities of the City and County of Fresno, and their officers, agents, employees and members of the Authority Commission.

12. All policies shall contain (i) the agreement of the insurer to give the Owner; those listed in Exhibit N; and the Housing Authority of the County of Fresno, notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Owner, the Housing Authority of the County of Fresno; (iii) a provision that no act or omission of the Contractor shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the Owner, the Housing Authority of the County of Fresno, and its authorized parties in connection with any loss or damage thereby insured against.

13. The insurance policies shall name Owner, the Housing Authority of the County of Fresno, those listed in Exhibit N, their agents, officers, and employees, as additional insureds. Certificates evidencing compliance with each provision of the above insurance requirements shall be provided to Owner within fourteen (14) days of the execution of this Agreement. Further, all insurance policies shall contain endorsement affording notice to Owner and the Housing Authority of the County of Fresno, and those listed in Exhibit N, and prior to cancellation, non-renewal or amendment (except amendment naming Additional Insureds). Exclusions for subsidence, collapse and explosion shall be deleted in all policies. All coverage shall be placed with an insurance company duly admitted in the State of California and the insurance carriers must have a rating of A or higher by Standard and Poor or have a Best's Key Rating of at least an "A" and a Best's Key Class of at least a "IX" (nine). The insurance coverage required shall be of sufficient

type, scope, and duration to ensure coverage for the Owner for liability related to any manifestation date with the applicable statutes of limitation and/or repose, which pertain to any work performed in relation to the Project.

DRAFT

EXHIBIT H
Section 3 Plan

DRAFT

EXHIBIT I
Section 3 Certification

SECTION 3 AFFIRMATIVE ACTION PLAN

In accordance with the Housing and Urban Development Act of 1968, as amended, and the regulations pursuant to that Act.

(Contractor)

Agrees to comply with Section 3 of that Act by assuring that to the greatest extent feasible:

- \$ Training and employment opportunities will be given to lower income residents of the project; and
- \$ Contracts for work in connection with the project will be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of project.

_____ will initiate the following actions to insure utilization of lower income project residents as employees or trainees and to incorporate project area small business as subcontractors and supplies:

1. The Contractor will establish and maintain a directory of service organizations, job referral agencies and manpower training programs operating within, or serving, project area residents.
2. The Contractor will submit prior to the award of a contract, a signed assurance to comply with Section 3 regulations and requirements.
3. The Contractor will provide, prior to the signing of a contract, a statement of new work force needs, including trainee positions.
4. The Contractor will notify Community based organizations of available employment opportunities, and shall maintain records of response from such organizations.
5. The Contractor will undertake personal recruitment efforts directed to such service organizations and to schools with lower income resident training programs.
6. The Contractor will maintain a file of the names and addresses of each low income resident worker referred and what action was taken with respect to each referred worker. (Attached)
7. The Contractor will include the Section 3 clause in every subcontract for work in connection with H.U.D. projects. (Attached)

8. For each subcontract, the Prime Contractor will submit, prior to Contract award, the Section 3 Affirmative Action Plans of its subcontractors.
9. The Contractor will not attempt to circumvent Section 3 Provisions.
10. The Contractor will make a good faith effort to employ or fill training positions with lower income project area residents, will, as a minimum, provide evidence of the following:
 - (a) Attempts to recruit from the project area through location advertising media, community organizations, public and private agencies operating within or serving the project area, such as the State Employment Department, and the Private Industry Council.
 - (b) Maintain a list of all lower income area residents who have applied either on their own or referral from any source, and if such persons, if otherwise qualified, have been employed.
11. The Contractor will make a good faith effort to incorporate project area businesses as Subcontractors and Suppliers.
12. The Contractor will provide the Section 3 workforce and business utilization reports required under this contract.

_____ fully realizes failure or refusal to comply and give satisfactory assurances of future compliance with the requirements of this Affirmative Action Plan shall be proper basis for any or all of the following actions: Cancellation, termination or suspension in whole or in part of the contract; a determination of ineligibility or debarment from any further contracts under any federal program with respect to which the failure or refusal occurred until satisfactory assurances of future compliance have been received.

Authorized Signature _____ Date _____

EXHIBIT J
Form Notice to Proceed

(Name of Contractor)
Date _____

Contract No. _____

(Street Address)
Project No. _____

(City, State and Zip Code)

Location _____

Gentlemen (or Dear Sir):

Pursuant to the terms of your contract, dated _____,
20____ for _____

(General Construction) (Plumbing) (Heating) (Electrical)
you are hereby notified to commence work thereunder at the state of business on
_____, 20____. The Time for Substantial Completion set forth in the contract
is _____, calendar days, including the starting day, which establishes
_____, 20____, as the substantial completion date.

Please note carefully and fulfill the requirements of the Insurance Exhibit relative to the submittal and approval of Workmen's Compensation and Manufacturer's and Contractor's public liability insurance.

You are informed that the _____ has been appointed Contracting Officer and is duly authorized to administer your contract for, and in the name of, Owner.

Under separate cover, there is being forwarded to you one executed set of Contract Documents, consisting of the Contract, Performance and Payment Bond(s) Specifications, and Drawings.

You are instructed to submit for our approval a breakdown of your contract price on the enclosed forms without delay per the Special Conditions.

Please acknowledge receipt of this Notice by signing and dating, and return all copies promptly to this office.

Very truly yours,

Owner
_____, a California Limited Partnership

By _____

Enclosure

EXHIBIT K
Form of Installation and Repair Guarantee

When required by the specifications, written guarantee shall be in the form of the following Guarantee on the contractor's/subcontractor's own letterhead:

(Project) _____

Date: _____

GUARANTEE FOR _____

We hereby guarantee that the

_____ which we have install in

has been done in accordance with the drawings and specifications and that the work as installed will fulfill the requirements of the guarantee included in the specifications. We agree to repair or replace any or all of our work together with any other adjacent work which may be displaced by so doing, that may prove to be defective in its workmanship or material within a period of two (2) years from date of acceptance of the above mentioned structure by the ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above mentioned conditions within a reasonable time after being notified in writing, we, collectively or separately, do hereby authorize the 1555 Santa Clara Street, LP, a California Limited Partnership, to proceed to have said defects repaired and made good at our expense, and we will honor and pay the costs and charges therefore upon demand.

(Signed) _____
(Contractor)

(Countersigned) _____
(General Contractor)

EXHIBIT L

Notice for Affirmative Action to Ensure Equal Employment Opportunity under Executive Order 11246, and
the Standard Federal Equal Employment Opportunity Construction Contract Specifications

DRAFT

EXHIBIT N –
List of additional insured

DRAFT

EXHIBIT O –
Sub Contract List by Trade

DRAFT