

MEMORANDUM OF UNDERSTANDING
Between the City of Fresno
and
Housing Authority of the City of Fresno

THIS MEMORANDUM OF UNDERSTANDING, hereinafter referred to as "MOU" is made and entered into this 21st day of July, 2009 ("Effective Date") by and between the **City of Fresno**, a California municipal corporation, hereinafter referred to as "City", and the **Housing Authority of the City of Fresno**, hereinafter referred to as "HACF".

RECITALS

WHEREAS, the City has \$550,000 in its FY 08-09 General Fund Budget for the purpose of developing a comprehensive temporary housing program ("Program") for the homeless residing in the encampments located south of Ventura Avenue in the City of Fresno, in and around the Monterey Street Bridge (hereinafter referred to as "Bridge Encampments"); and

WHEREAS, HACF finances and oversees the development and management of affordable housing in the City of Fresno; and

WHEREAS, HACF represents it has the experience to develop temporary supportive housing for adults, transitional age youth, and children and their families who reside within the City of Fresno; and

WHEREAS, the City and the HACF desire to provide temporary supportive housing to approximately 150 individuals (including adults, transitional age youth, children and their families) who are homeless, were assessed and determined eligible by the City triage assessments conducted in April of 2009, and are residing in the Bridge Encampments (hereinafter such individuals are referred to as "Clients"); and

WHEREAS, this MOU will be administered for City by its City Manager (hereinafter referred to as "Administrator") or his/her designee; and

WHEREAS, this MOU will be administered for HACF by its Director of the Housing Programs Department.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

I. PURPOSE

The City and HACF seek to create temporary supportive housing for approximately 150 Clients, including rental assistance and other supportive services as needed.

This MOU delineates the responsibilities of the City and HACF with regard to the development of a Program, including the community planning process resulting in the development and documentation of a short term housing plan.

II. RESPONSIBILITIES

A. HACF shall be responsible to:

1. Direct the planning process and stakeholder input, and coordinate with community resources and data gathering efforts necessary to complete strategic supported housing plans.
2. Conduct housing outreach and maintain housing resource information for use by HACF subcontractors Clients and staff to assist in the identification and utilization of appropriate housing resources in the community.
3. Provide confidential on-going case management and supportive services to Clients and require its respective subcontractor(s) to do the same.
4. Assist Clients to retain housing assistance.
5. Lease housing units and sublease to Clients in accordance with supportive housing plans.
6. Provide housing and property management services for all housing units developed under this MOU. Services may include, but not limited to rent collection, conduct and maintain property inventory, disburse payment and reimbursements to subcontractors (i.e., property owners/landlords and service providers such as case managers and property managers).
7. Coordinate with community resources for the purpose of collecting, storing, and disbursing basic furnishings and other essential household items.
8. Dispensing the funds for the residents in accordance with the Program, including for the purpose of securing housing, incidentals, and insurance for such activities.
9. Coordinate and facilitate collaborative meetings between HACF, HACF subcontractors and City, as needed.
10. Coordinate all referrals and Client intake.
11. Compile reports as needed.
12. Provide training to HACF staff and subcontractors as needed.
13. Process Client termination for non-compliance with Program guidelines, including any non-compliance with "Participant-Service Provider Agreement" developed by the parties as part of such guidelines.
14. Maintain accurate documentation of supportive services and require its subcontractors to do the same.
15. Cause its subcontractors to identify its contact person to both City and HACF.

16. No less than weekly, complete and cause HAC subcontractors to complete data entry in the "Homeless Management Information System" program.
- B. City shall be responsible to:
1. Upon request from HACF, provide all available necessary or relevant information regarding the Clients to be served by the Program developed under this MOU.
 2. Make timely referrals of Clients to the Program who meet established eligibility requirements under the Program.
- C. City and HACF shall collaborate and be responsible to develop written Program guidelines in accordance with the following:
1. Coordinate the appropriate level of case management or other types of supportive services so that they are available on a timely basis to meet the behavioral health needs for Clients of the Program developed under this MOU.
 2. Afford Clients participation in the planning and decision-making process to include, but not limited to, participation in meetings, forums, and any other venue where decisions or recommendations are made regarding the development of the Program or use of funds under this MOU.
 3. Meet with representatives from HACF and its subcontractors (i.e., HACF's landlords of housing units, property managers and case managers), the City and other invited participants to review work accomplished under the Program, assess quality of working relationship between all parties and determine status of work product.
 4. Prepare short term strategic supportive housing plans representative of stakeholder and community partner input and subject to review and approval by all appropriate persons.
 5. Work cooperatively to execute all necessary documents, including the MOU and other agreements, to establish the role of HACF as the qualified property manager, and to establish the role of the City as the funding agency for the Program.

III. TERM

The term of this MOU shall commence on the Effective Date stated above and shall continue until September 30, 2009, unless this MOU is terminated sooner or the term is extended by mutual agreement of the parties.

IV. TERMINATION

- A. Non-Allocation of Funds – Performance of this MOU is contingent upon approval of funds by the appropriating governmental agencies. Should sufficient funds not be allocated, the terms of this MOU may be modified in writing, or this MOU may

be terminated by fifteen (15) days prior written notice given one party to the other.

- B. Breach of Contract – The City may immediately suspend or terminate this MOU in whole or in part, where in the determination of the City, there is:
1. An illegal or improper use of funds;
 2. A failure to comply with any term of this MOU;
 3. A substantially incorrect or incomplete report submitted to the City; or
 4. An improperly performed service.
- C. Without Cause – This MOU may be terminated by either of the parties upon the giving of a thirty (30) day advance written notice of intention to terminate from one party to the other. This notice shall be directed to the attention of the following parties:

To the City:

Bruce Rudd
Assistant City Manger
2600 Fresno Street
Fresno, CA 93721-3601
(559) 621-8000
(559) 621-7776 – Fax

To HACF:

Rebecca L. Craigo, Director, Housing Programs Department
Housing Authority of the City of Fresno
1331 Fulton Mall
P.O. Box 11985
Fresno, CA 93776
(559) 443-8488

- D. In the event of this MOU's termination, the HACF shall promptly return all funds with interest, not yet allocated or spent, to the City, save and except amounts sufficient to pay for any rental payments on housing units leased by the HACF for the Clients, or otherwise contractually obligated in writing to be spent by HACF for the Clients in accordance with Program guidelines.

V. COMPENSATION/INVOICING

- A. In consideration of the services to be provided pursuant to the terms and conditions of this MOU, City agrees to pay HACF and HACF agrees to receive compensation in the amount of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) to be paid in two installments. The first instalment of ~~\$225,000~~ ^{PP} 325,000 will be paid within five (5) business days of the execution of this MOU by both parties. Upon HACF demonstrating to City's satisfaction the eligible expenditure

of \$200,000 of the first installment, City will pay the second installment of \$225,000 within five (5) business days of receipt from HACF a satisfactory written accounting of the expenditure of \$200,000 of the first installment.

- B. Any funds paid by City hereunder which remain unearned at the expiration or earlier termination of the MOU shall be, and remain in trust, the property of City and shall be remitted to City within 10 days of expiration or earlier termination of this MOU. Any interest thereon must be credited to or returned to City. Upon any dissolution of HACF, all funds advanced pursuant to this MOU and not expended shall be returned, with interest, to City, notwithstanding any bylaws or Articles of Incorporation of HACF to the contrary.
- C. The funds received hereunder by HACF shall not be used to supplant expenditures controlled by HACF.
- D. The funds received hereunder by HACF shall not be used by HACF to enforce the terms or conditions of any subcontract, lease with third parties for temporary housing or subleases with Clients, including, without limitation, the bringing of any unlawful detainer action or for rent beyond the term of the respective lease or sublease approved by the City. HACF shall, however, be responsible for enforcing the terms and conditions of such subcontracts, leases and subleases at HACF's sole cost and expense.
- E. The term of any subcontract, lease or sublease with Client shall not exceed September 30, 2009, if solely dependent upon funds received hereunder. City shall not be responsible to HACF for any further compensation pursuant to this MOU without a prior written amendment. No acceptance or approval of any subcontract, lease or sublease by City hereunder shall constitute approval of any additional compensation. In the event HACF performs services without a prior written amendment by the parties hereto, HACF will not be entitled to compensation for such services.

VI. RECORDS, AUDITS AND INSPECTIONS

- A. Record Establishment and Maintenance – HACF shall establish and maintain records in accordance with those prescribed by City with respect to all matters covered by this MOU.
- B. Documentation – HACF shall maintain information on units of service provided and costs incurred corresponding to the expenditures.
- C. Records of HACF'S expenses pertaining to the Program shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this MOU and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of HACF pertaining to the Program shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This paragraph shall survive expiration or termination of this MOU.

VII. SUBCONTRACTS

- A. HACF may propose contracts (subcontracts) with one or more third parties (subcontractors) to carry out a portion of those services (including, without limitation, leasing of housing units to HACF) insofar as it seems proper or efficient; provided, however, that all such contracts shall be in writing and approved in writing by the Administrator prior to execution and implementation.
- B. HACF is responsible to City for the proper performance of any subcontract. No such subcontract shall relieve HACF of its obligations under this MOU.
- C. Any subcontract shall be subject to the same terms and conditions as otherwise expressly required to be contained in such subcontracts and also those contained in Sections VI, VIII, IX, XII and XXI of this MOU.
- D. No officer or director of HACF shall have any direct or indirect financial interest in any subcontract made by HACF or in any loan, purchase of property, or any other arrangement made by HACF, by whatever name known.
- E. HACF shall cause any subcontract hereunder to contain (i) an indemnity by the subcontractor of the City and each of its officers, officials, employees, agents and volunteers, (ii) a provision requiring that the subcontractor add City and each of its officers, officials, employees, agents and volunteers as an additional insured or co-insured, respectively, to the subcontractor's insurance policies to be maintained, (iii) a provision requiring that the subcontractor include City and each of its officers, officials, employees, agents and volunteers on any waivers of subrogation from the subcontractor and its insurance companies, and (iv) a provision causing City to be a third party beneficiary under the subcontract so that any rights or interests in the subcontract benefit and flow to the interest of the City.

VIII. COPYRIGHTS/PATENTS

- A. If this MOU results in a book or other copyrightable material, the author may seek any available copyright protection for the work unless a work for hire. City reserves a royalty-free, nonexclusive, irrevocable and assignable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
- B. Any discovery or invention arising out of or developed in the course of work aided by this MOU, shall promptly and fully be reported to City for determination by City as to whether patent protection on such invention or discovery, including rights thereto under any patent issued thereon (reserved henceforth onto City), shall be imposed and administered, in order to protect the public interest.

IX. POLITICAL, RELIGIOUS AND LOBBYING ACTIVITY PROHIBITED

- A. None of the funds or services provided directly or indirectly under this MOU shall be used for any political activity, or to further the election or defeat of any ballot measure or candidate for public office.

- B. None of the funds or services provided directly or indirectly under this MOU shall be used for any religious activity, including but not limited to religious worship, instruction, or proselytization, or to purchase religious materials.
- C. HACF shall not require those individuals or entities receiving the funds or services, in whole or in part, by this MOU to attend or take part in any religious activities. Furthermore, HACF shall take reasonable steps to insure that functions or activities funded herein are separate in time or in location from functions or activities that are inherently religious, such as religious worship, instruction, or proselytization.
- D. None of the funds provided under this mou shall be used for publicity, lobbying or propaganda purposes designed to support or defeat legislation pending before any legislative body.

X. INDEMNIFICATION

- A. HACF shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, HACF or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of HACF or any of its officers, officials, employees, agents or volunteers in the performance of this MOU.
- B. City shall indemnify, hold harmless and defend HACF and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, HACF or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this MOU.
- D. In the event of concurrent negligence on the part of HACF or any of its officers, officials, employees, agents or volunteers, and City or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.
- E. This section shall survive termination or expiration of this MOU.

XI. INSURANCE

It is understood and agreed that City and HACF maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. Evidence of insurance, certificates of insurance or other similar documentation shall not be required of either party under this MOU.

XII. NONDISCRIMINATION

To the extent required by controlling federal, state and local law, HACF shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this MOU, HACF agrees as follows:

- A. HACF will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this MOU.
- B. HACF will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. HACF shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to HACF's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. HACF agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- C. HACF will, in all solicitations or advertisements for employees placed by or on behalf of HACF in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

- D. HACF will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of HACF's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

XIII. INDEPENDENT CONTRACTOR

- A. In the furnishing of the services provided for herein, HACF is acting solely as an independent contractor. Neither HACF, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which HACF shall perform its work and functions. However, City shall retain the right to administer this MOU so as to verify that HACF is performing its obligations in accordance with the terms and conditions thereof.
- B. This MOU does not evidence a partnership or joint venture between HACF and City. HACF shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this MOU, HACF shall bear its own costs and expenses in pursuit thereof.
- C. Because of its status as an independent contractor, HACF and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. HACF shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this MOU, HACF shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of HACF'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this MOU, HACF may be providing services to others unrelated to City or to this MOU.

XIV. ASSIGNMENT

- A. This MOU is personal to HACF and there shall be no assignment by HACF of its rights or obligations under this MOU without the prior written approval of the Administrator. Any attempted assignment by HACF, its successors or assigns, shall be null and void unless approved in writing by the Administrator.
- B. HACF hereby agrees not to assign the payment of any monies due HACF from City under the terms of this MOU to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due HACF directly to HACF.

XV. WAIVER

The waiver by either party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU. No provisions of this MOU may be waived unless in writing and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

XVI. HEADINGS

The section headings in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this MOU.

XVII. SEVERABILITY

The provisions of this MOU are severable. The invalidity, or unenforceability of any one provision in this MOU shall not affect the other provisions.

XVIII. INTERPRETATION

The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

XIX. ATTORNEY'S FEES

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

XX. NO THIRD PARTY BENEFICIARIES

The rights, interests, duties and obligations defined within this MOU are intended for the specific parties hereto as identified in the preamble of this MOU. Notwithstanding anything stated to the contrary in this MOU, it is not intended that any rights or interests in this MOU benefit or flow to the interest of any third parties.

XXI. COMPLIANCE WITH LAW; CONFIDENTIALITY

In providing the services required under this MOU, HACF shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this MOU.

All services performed by HACF under this MOU shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality.

XXII. GOVERNING LAW AND VENUE

This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be Fresno County, California.

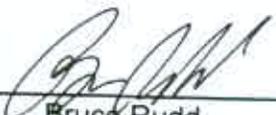
XXIII. ENTIRE AGREEMENT

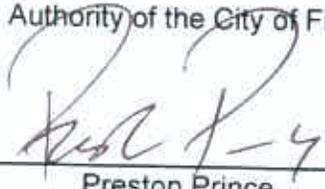
This MOU constitutes the entire MOU between HACF and the City with respect to the subject matter hereof and supersedes all previous agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this MOU. No modifications, amendments, or changes shall be made to this MOU unless it is reduced to a writing and executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first hereinabove written.

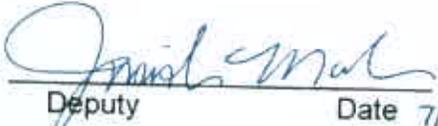
City of Fresno

Housing Authority of the City of Fresno

By:  7/21/09
Bruce Rudd,
Assistant City Manager

By: 
Preston Prince,
Executive Director

ATTEST:
Rebecca E. Klisch
City Clerk

By: 
Deputy Date 7/23/09

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

By:  6/23/09
Nancy A. Alger Date
Senior Deputy