

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION ESTABLISHING ADMINISTRATIVE POLICY TITLED  
REDEVELOPMENT IMPROVEMENT ACT FOR REDEVELOPMENT  
AGENCY PROJECT ASSISTANCE, DEVELOPMENT AGREEMENTS AND  
PROFESSIONAL CONSULTANT SOLICITATION PROCESSES**

**WHEREAS**, the California Constitution and California Community Redevelopment Law provide the source authority and Fresno Municipal Code Section 2-1301 and 2-1302, and the Bylaws contained in Resolution No. 1734, provide the implementation authority for the Redevelopment Agency of the City of Fresno (Agency); and

**WHEREAS**, the mission of the Agency is to remove blight and encourage growth, renewal and rehabilitation of deteriorated areas beset by adverse economic, physical, and environmental conditions; and

**WHEREAS**, the Agency partners with the private sector and other public agencies to carry out its mission; and

**WHEREAS**, there is a desire to set forth enhanced administrative policies and procedures for evaluation and oversight of private sector proposals for Agency financial assistance; and

**WHEREAS**, there is a desire to further define and structure policies for Request for Proposals/Qualifications, Exclusive Negotiating Agreements, Master Developer Negotiating Agreements, Owner Participation Agreements, Disposition and Development Agreements, Development Agreements, and other agreements.

**NOW, THEREFORE, BE IT RESOLVED, BY THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO**, as follows:

**ARTICLE I  
GENERAL PROVISIONS**

**Section 1. Definitions.**

1. **Agency** means the Redevelopment Agency of the City of Fresno, a public body, corporate and politic, organized and existing under the California Redevelopment Law, the Fresno Municipal Code and any assignee of or successor to its rights, powers and responsibilities.
2. **"Affordable Housing," "Affordable Housing" or "Affordable Units"** means the Units available at affordable housing cost, as defined by California Health & Safety Code (H & S Code) Section 50052.5, to persons and families of low and

moderate income, as defined in H.&S.Code Section 50093 of Code, or successor provisions, which requirements shall be enforceable by covenants running with the land. As used in this Policy, the term "Affordable Rent" shall mean Affordable Units whose annual rental amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by H & S Code Section 50053, or its successor, enforceable by covenants running with the land.

3. **Financial Assistance** Agency assistance includes any direct/indirect assistance/subsidy (other than federal/state funding sources which by their terms preclude implementation of this Policy), including the following or any combination of the following:
  - Agency Loans;
  - Agency Grants;
  - Below market value transfer of Agency real property/facilities and/or use rights;
  - Loan Guarantees and Loan Forgiveness
  - In-kind services;
  - Deferrals or abatement;
  - Non-market concessions on ground or facility leases; and non-market acquisitions/dispositions
  - Bonding capacity;
  - Taxing/assessment authority;
  - Revenue/tax share; and/or
  - Public /private joint ventures.
  
4. **“Proposer.”** Also referred to as “Developer.” A Proposer for assistance from the Agency for the purposes of this policy shall be a (1) wholly private sector, for profit, entity, a (2) wholly private sector, not for profit, entity, a (3) combination of (1 and (2). The entity can take the form of a sole proprietor, a general partnership, a limited partnership, a limited liability company or a corporation, or a combination thereof. Requests for financial assistance from other public agencies (i.e. public-public partnerships) will be evaluated independent from this Administrative Policy.
  
5. **“Law”** or CRL means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*).
  
6. **“Request for Proposals.”** A Request for Proposal (RFP) is a solicitation initiated by the Agency to provide a competitive process for selecting development projects, Developers and professional consultants, and establishing the terms and conditions thereof.
  
7. **“Exclusive Negotiating Agreement.”** An Exclusive Negotiating Agreement (ENA) is an agreement in which the Agency agrees to exclusively negotiate with

a specified party for the development of a defined area for a period of time. The ENA provides the structure, guidelines and schedule for the negotiation process.

8. **“Development Agreement.”** A Development Agreement is an agreement setting forth a development plan, performance schedule and obligations of the parties, and may take the form of an Exclusive Negotiating Agreement, a Master Developer Negotiating Agreement, an Owner Participation Agreement, a Development and Disposition Agreement, and a statutory Development Agreement, approved to form by City Attorney’s Office.
9. **“Master Developer Negotiating Agreement.”** The Master Developer Negotiating Agreement is an Agreement in which the Agency agrees to negotiate with a specific party for the development of a defined area in which the proposed project is large scale and/or complex as more specifically provided in Article VII of this Policy.
10. **“Owner Participation Agreement.”** An Owner Participation Agreement (OPA) is an agreement between the Agency and a property owner to develop the owner’s property setting forth a development plan, performance schedule and obligation of the parties, consistent with Plan Area owner/resident participation requirements.
11. **“Professional Consultants.”** Those persons who have specialized education and considerable experience in a given field. Examples of professional services include, but are not limited to, architects, auditors, certified public accountants, engineers, landscape architects, management consultants, planners, surveyors, and construction project managers. The term “consultant” may include individuals, partnerships, corporations, joint ventures or any other combination of firms or persons competent to perform the required services.
12. **“Unsolicited Proposal.”** An “Unsolicited Proposal” is a proposal, statement of interest, statement of qualification, quote for consideration of contract, or bid that is presented or put forward to the Agency that was not the result of a notice inviting bids, a request for proposals, or other solicitation or competitive procurement under taken by the Agency, and which contains (i) a specific price or schedule of rates; (ii) a specific proposal of work, service, product purchase; and (iii) a request of the Agency to enter a contract to procure such a product or service.
13. **“Mixed Use.”** Mixed use is a concept and/or design that is a finite project within whose boundaries residential uses are introduced and fully integrated with office, commercial, and light industrial land uses, designed to offer and promote a user friendly walking environment in a locale where residential where residential uses are in close proximity to places of employment and commerce.

## **Section 2. Purpose and Applicable Projects.**

The purpose herein is to enhance the due diligence, evaluation and oversight process for development proposals requesting more than \$1,000,000 in Agency direct/indirect assistance and to further define and enhance the Request for Proposal process of the Agency and to define and structure policies and criteria for Exclusive Negotiating Agreements and Master Negotiating Developer Agreements.

With the exception of the project exemptions described below in Section 3, any application, request or proposal for Agency direct/indirect assistance for a private project valued at, or which involves contingent financial liability to the Agency exceeding \$1,000,000 will automatically trigger implementation of this Policy

Splitting or separating applications into components smaller than \$1,000,000 for the purpose of evading the provisions of this Policy is prohibited. Any combination of City and Agency assistance that would total more than \$1,000,000 would be subject to City and Agency Policies, in the Council and Agency discretion, respectively.

## **Section 3. Exempt Projects.**

Development proposals seeking less than \$1 million in assistance are exempt and not subject to the terms of this Policy. Affordable housing and mixed-use projects which include more than 20% affordable units and receive less than \$2 million in Agency assistance shall be exempt. Owner Participation Agreements are exempt. The construction of public improvements including streets, curbs, gutters, utility relocations, drainage or irrigation facilities by the Agency near, adjacent to, or for the benefit of a private development project are exempt.

## **Section 4. Regulatory and Legislative Review.**

This Policy shall not preclude or supersede any applicable state, federal or local laws including those requiring examination of records/due diligence or oversight relative to the specific purposes of a proposed project. The Agency's evaluation process is for the benefit of the Agency only and shall not be relied upon by the Proposer or any other party for any other purpose.

## **Section 5. Provisions Included in Agency Development Agreements.**

Approved projects shall include parties, a scope of development, a project budget including sources and uses of funds, a schedule of performance, a proposed timeline for disbursement of funds and/or other financial assistance and conditions for financial assistance. In addition, the following contract provisions as modified by Agency from time to time, shall be addressed in Agency development agreements.

### **a) Insurance**

Proposer must provide a certificate of a liability insurance policy with a limit at an amount acceptable by the Agency. The Agency shall be named as an additional insured.

Proposer must also provide where applicable, certificate of insurance for workers compensation insurance and errors and omissions insurance with limits set at an amount acceptable to the Agency. Insurers must be acceptable to the Agency.

**b) Construction, Performance and Fidelity Bonds**

Depending on the nature of the proposal for assistance and other mitigating circumstances, the Agency may request a bond(s) by Proposer from sureties acceptable to the Agency. The performance and payment bonds shall be maintained for a period of time deemed appropriate by the Agency and based on the level of risk to the Agency and may require that the Agency be added as an obligee thereunder.

**c) Indemnification**

To the maximum extent permitted by law, Proposer shall indemnify, defend, protect and hold harmless the Agency and each of its officers, officials, employees, agents, and volunteers from and against all claims.

**Section 6. Three Year Review.** One year from the passage of this Policy and for the following two years, the Agency Board shall meet at regularly scheduled public session to evaluate the provisions of this Policy. The Agency Board will determine if any modifications are necessary based on the actual experience in the previous year in reviewing and processing applications/proposals for Agency financial assistance exceeding \$1,000,000.

**ARTICLE II  
DEVELOPMENT REQUEST FOR PROPOSAL (RFP) POLICIES**

**Section 1. Purpose and Applicable Projects.**

The Agency may from time to time solicit development proposals/qualifications for a given project and require information relative to the Proposers' qualifications and experience and information related to the project concept. The following process criteria shall guide RFP solicitations:

**Section 2. Review and Selection Process.**

1. The Executive Director, or his/her designee, and other entities as may be appropriate shall prepare and circulate the RFP, and receive and evaluate the RFP responses.
2. Criteria to be evaluated may include but are not limited to:
  - a) Proposer's track record with similar projects;
  - b) Proposer's financial strength;
  - c) project design;
  - d) quality of development;
  - e) financial feasibility;
  - f) business terms;
  - g) timeline;
  - h) public policy objectives;

- i) leverage of capital investment;
- j) Agency cost vs. benefit (type and degree);
- 3. The Executive Director's office shall prepare a report summarizing its findings based upon the evaluation process for Agency Board consideration.
- 4. The Executive Director is under no obligation to proceed forward, respond to or otherwise consider unsolicited proposals. Should the Executive Director consider an unsolicited proposal, the proposal shall be subject to the competitive RFP process (except as provided in # 5 immediately following)
- 5. Unsolicited development proposals may be placed on agenda by Board members and **shall require super majority approval by the Board**. A deposit to cover estimated costs including for staff time, legal work, consulting services and appraisal for unsolicited proposals may be required. The Agency, at its sole discretion, may reduce or abate the billing fee for staff time and consulting services.
- 6. Developer proposals or Development Agreement(s) resulting from the Agency solicited RFP process require simple majority approval by the Board.

**ARTICLE III  
DUE DILIGENCE POLICIES**

**Section 1. Evaluation Process.**

Before a commitment of Agency financial assistance is made by the Agency Board, the proposal will undergo the evaluation process.

The Executive Director shall direct the evaluation process outlined below. It will be the responsibility of the Proposer to provide any requested information to the Agency to facilitate the process. The timeline for due diligence evaluation shall be based on the size and complexity of the proposed project. Agency staff will expeditiously process all documents and reports related to the proposed project.

The following outlines the evaluation process:

**1. Public Policy.**

Does the project represent a valid public policy issue?

- a) Is the project consistent with the Redevelopment plan and relevant adopted plans and policies?
- b) Is the Agency the most appropriate partner/participant vs. other community or public agencies?
- c) Does public benefit require and is public benefit sufficient to justify the requested public assistance?

**2. General Information.**

- a) Form of the organization and governing documents of the business entity that will be participating in the venture including the physical address, state of formation/incorporation, tax identification number, tax exemption

determinations (as applicable), names of any subsidiaries, members, partners, principals, venturers, participants and a brief business description.

- b) The names, resumes and contact information of executive personnel and principal stockholders/members/directors/partners of the business entity. References shall also be provided for review.

### **3. Proponent Qualifications.**

Do the project proponents represent responsible partners for the Agency?

- a) What is the track record of the Proposer/principals with other projects in our community and other communities? Have these other projects been successful, i.e. have they achieved intended goals?
- b) Have the project proponents been successful in securing other funding for this or other projects?
- c) Have Proposers been involved in litigation, defaulted on contracts, or been debarred from public projects?
- d) Are Proposers bondable and credit worthy? Any negative judgment history?
- e) Does the Proposers net equity demonstrate sufficient financial capacity to carry out the project?

### **4. Financial Information.**

Does the party to the proposed agreement (e.g. LLC) demonstrate sufficient financial capacity to carry out the project?

- a) All principals or partners of project Proposer must provide a current personal financial statement verified by a Certified Public Accountant and Federal tax returns for the past three years verified by a Certified Public Accountant. Public companies that are traded on the stock exchange shall be reviewed from publicly available information on publicly traded companies.
- b) Project Proposer must provide a current financial statement and balance sheet.
- c) Project Proposer must provide audited financial statements for the past three years, including (if applicable) annual and quarterly reports to shareholders, if appropriate.
- d) Project Proposer must provide a schedule of any contingent liabilities and obligations not appearing on the balance sheets, including threatened claims, leases, guarantees, letters of credit, unfunded pension, or deferred payments.
- e) Project Proposer must provide a list of banking and credit relationships of the Proposer including the name of financial institutions, description of outstanding debts and loan commitments, interest rates and credit terms.
- f) All of the above information can be provided to a third party accounting or legal representative who shall review the principal/partner/company records and then verify to Agency the financial strength and position of the individuals or company.

- g) For local, regional or national redevelopment Developers with a clearly demonstrated track record of success in redevelopment projects, the Executive Director, at his/her sole discretion, may waive formal review of financial and tax information.

**5. Project Pro-Forma.**

The Proposer shall submit a pro-forma that includes:

- a) The sources of funding including owner's equity, bank loans, other financing sources and the use of Agency proceeds.
- b) Estimates of project costs including financing costs, design and architecture, permits and fees, construction, off-site improvements, tenant improvements, marketing and administration, operating costs, reserves, Developer/investor fees, contingency, and profit.
- c) Forecasts of monthly rents, balance sheets, and cash flow projections including assumptions upon which the forecasts are based.
- d) A timeline for achieving project and financial goals and making debt service and operational payments.
- e) Estimation of net economic impact on the community based on the pro-forma.

**6. Equity Evaluation.**

The Proposer's equity participation project shall be identified in the proposal to determine the amount of equity the Proposer has committed to the project using the following criteria:

- a. Equity represented in hard costs such as equity in real property, including land and improvements, leasehold improvements, capital equipment, inventory, and other assets shall be estimated and appraised, if necessary.
- b. How much equity value is attributed to Developer fees, management fees, profit and overhead.
- c. Verified soft costs including development fees, consulting, engineering, architectural, accounting, and legal work related to proposed project shall be considered as part of Proposer's equity participation.
- d. This examination shall ensure that the Proposer is not inflating the value of equity participation.

**7. Project Economics.**

Does the project appear to be economically viable?

- a) What is the requested assistance from the Agency and does the Agency have sufficient resources to assist the project? What is a reasonable estimation of the Agency's potential soft costs to evaluate the proposal and monitor the project, if approved, including personnel, legal, consultant/contractor, and other indirect assistance to project? Given the costs to the Agency, what are the potential benefits? Is the project feasible without Agency assistance? If not, why not?

- b) Does the Proposer have the tenure/control of the project site? Will demolition and/or relocation be required? Is there a high probability that an eminent domain action will be required by the Agency?
- c) In general, does the project make financial sense given the economic and market conditions? What is the long term viability of the project? What research has been provided to support project viability?

**8. Risk Assessment.**

Are the potential risks associated with a failure of the project acceptable when compared with the potential benefits?

- a) What is the risk of loss to the Agency in the event of project failure including the impact on the Agency bond rating and other Agency resources? Is any loss mitigated by the increase in tax increment created by the project?
- b) Are there clear performance measures for the project?
- c) Is the infrastructure in place to accommodate the proposed project?
- d) What is the estimated number of net new jobs created by the project?
- e) What is the projected net gain on property tax or other revenues?
- f) What is the project's estimated economic impact?
- g) Does the project generate or relocate economic activity from one area of the city to another?
- h) Is there potential benefit of the project regardless of the project outcome (e.g. infrastructure improvements?)

**9. Affordable Housing.**

For Affordable Housing, cost-benefit analysis will be prepared that includes the cost of the proposed project evaluated against industry cost standards for same or similar product type. What is the Developer's return on equity or the Developer fee as compared with industry Developer standards? What are the benefits to the Agency in terms of affordable units, replacement units, tax increment, and other impacts?

**Section 2. Project Conditions.**

**1. Real Property.**

Any real property that is used by the Proposer as security for a guarantee or collateral for assistance by the Agency shall have an appraisal, phase one environmental report and preliminary title report completed prior to the Agency Board approval. These documents shall be provided to the Agency. Costs of a preliminary title report, a phase one environmental report, and a GIS review of surrounding property uses, zoning, and adjoining property owners shall be negotiated between Proposer and Agency. Agency shall obtain title insurance on any real property pledged as collateral. Agency shall ensure that the Proposer grants Agency a priority position on real property offered as security subject to Proposer's lender (if any). Proposer will request the subordination of all liens on real property offered as security to Agency, including existing construction work on property, as requested by the Agency.

**2. Leases.**

Tenant improvements related to facilities/property, excluding ground leases, that a Proposer will lease from the Agency exceeding \$1,000,000 may be, at the sole discretion of the Executive Director, secured by any of or a combination of the following methods:

- a) Personal guarantees, bonds, or acceptable alternative security by the principals.
- b) Collateralized by real property of Proposer or its principals.
- c) Funds pledged in Proposer's bank account.

**Section 3. Executive Director Report.**

The Executive Director shall prepare a report summarizing findings based on the evaluation process. The report shall include fiscal and economic impact findings that include:

- a) Impact upon Agency resources.
- b) Number of net new jobs created by the project.
- c) Whether the project generates new economic activity or relocates economic activity from one area of the City to the other.
- d) Projected increase in tax increment or other revenues.
- e) An overall risk assessment of the project to the Agency.
- f) A recommended level of ongoing oversight.

**Section 4. Ex Officio Attorney Review.**

The Agency's Ex-Officio attorney in consultation with the Executive Director may prepare a written report, including any recommendations, to the Agency Board. The report will be included with the Executive Director's Report and presented to the Agency Board.

**Section 5. Transparency.**

All final Development Agreement documents posted for award, all staff reports, all final consulting reports, all other related reports relating to the proposed project/property and pro forma documents, shall be available for public inspection, consistent with controlling law, at the Agency's office and also in the City Clerk's office. The Agency will protect confidential information (e.g. proprietary information) consistent with applicable law.

**ARTICLE IV  
IMPLEMENTATION AND OVERSIGHT POLICIES**

The Executive Director's Office shall have the responsibility to provide oversight on all approved projects that receive financial assistance from the Agency under the policy. The oversight procedures include the following:

**Section 1. Insurance.**

During the term of an Agreement and prior to certificate of completion the Proposer shall maintain where applicable a policy of insurance naming the Agency as an additional insured for liability insurance, workers compensation insurance, and, errors and omissions insurance.

**Section 2. Books and Records.**

Agreements shall include language to make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to all matters covered by subject Agreement, and permit Agency to audit, examine and make excerpts or transcripts from such records, for a period of four (4) years following expiration/termination of Development Agreement(s).

**Section 3. Audit.**

Agreements shall include language such that Agency may audit any conditions relating to subject Agreement at Agency's expense, unless such audit shows a materially significant discrepancy in information reported by parties to agreement to Agency in which case parties shall bear the cost of such audit. Parties to agreement shall also reasonably cooperate with and assist the Agency in Agency's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1. The audit rights shall survive for a period of four years after the expiration or termination of the subject Agreement.

**Section 4. Monitoring Contract Compliance and Disbursement of Funds.**

Developer must perform all contract obligations and non-performance events shall be handled pursuant to applicable administrative default provisions. Disbursement, withhold and retention of funds shall be set forth in the schedule of performance and payment. Such disbursements, withholds and retentions may follow a banking model with progress payments based on percentage of work completed or other relevant criteria based on the nature of financial assistance. Monitoring and oversight will be outlined as deemed necessary and appropriate for the project in the subject agreement.

**Section 5. Encumbrances on Property.**

Agreements shall address encumbrance on Proposer wherein if encumbrances are permitted, Proposer shall obtain prior written approval from Agency before securing any additional loans on real property in which Agency has a secured interest or transferring such property.

**Section 6. Loan Extensions.**

In the event Proposer seeks to extend the term of an Agency note secured by real property, Agency must obtain an endorsement to its title policy and other investigations as necessary to determine the effect of the loan extension on the Agency priority lien position.

**Section 7. Report to Agency Board.**

The Executive Director's office shall report annually to the Agency Board on the status and progress of all private sector projects receiving direct/indirect assistance from the Agency exceeding \$1,000,000 and Proposer's adherence to contractual obligations. The report to the Agency Board shall include a matrix of said projects.

**Section 8. Transparency.**

Consistent with applicable law, the results of all final audits on projects receiving more than \$1,000,000 in Agency financial assistance shall be available to the public. In addition, all information provided by Proposer shall, consistent with applicable law, be available to the public. The Agency will protect confidential information (e.g. proprietary information) consistent with applicable law.

**ARTICLE V  
PROFESSIONAL CONSULTANT SERVICES SELECTION POLICIES**

**Section 1. Purpose.**

A purpose of this policy is to supplement Agency's existing requirements and establish certain guidelines for the selection of professional consultants, so the Agency may efficiently obtain the most highly qualified and competent consultants who will be best able to provide the Agency quality services at the best value, in a timely fashion.

Consulting services exceeding \$50,000 must be approved by the Agency Board. The Executive Director is authorized to contract for consultant services in an amount less than or to \$50,000.

**Section 2. Scope of Services.** The Agency shall develop the Scope of Services for the competitive procurement.

**Section 3. Solicitation Procedures.**

**1. Format of Solicitations.**

The format may be either a Request for Qualifications (RFQ) or Request for Proposals (RFP), or a combination thereof. The suggested format includes: scope of services; qualifications and information required from consultants for selection; reference to the Agency's standardized contract, any applicable preference under the Community Redevelopment Law for plan area owners/residents and, for certain federal projects, statement of the Disadvantaged Business Enterprise (DBE) goal.

**2. Distribution Lists.**

The Agency maintains files of names and brochures of the various consultants who have expressed a general interest in doing work for the Agency and may use such files for the purpose of mailing inquiries to various consultants as to their interest in the specific work or studies that the Agency may undertake from time-to-time. For all federally funded consulting services, the Agency may contact the Purchasing Division for potential DBE firms.

**3. Minimum Distribution Requirements of Solicitations.**

- (a) Over \$50,000: A minimum number of five (5) RFQs/RFPs, shall be distributed, where possible.
- (b) \$10,000 - \$50,000: A minimum number of three (3) RFQs/RFPs shall be distributed, where possible.
- (c) Under \$10,000: The Executive Director is authorized to make a selection after documented telephone or e-mail contacts of potential interested parties.

**Section 4. Advertising.**

All professional consulting services of \$50,000 and above shall be advertised one-time in a local newspaper of general circulation at least five (5) days before the due date of the RFQ/RFP, unless a mass mailing of 100 or more notices occurs. The Agency may also consider posting on the website and on the websites of professional organizations, if allowed.

**Section 5. Selection Criteria.**

Professional consultant services must be individually selected for a specific project based upon qualifications including experience of the consultant, special knowledge of the subject matter, ability to perform the services in the time allowed, record of success on similar work, ability to operate well in the necessary discussions, presentations, coordination and cooperation related to the project, as well as fees to be paid. The following factors may be considered and evaluated in selecting a professional consultant for a particular study or project:

- 1. Educational background and licensure (as required) of the consultant.
- 2. Relevant experience of the consultant.
- 3. Demonstrated record of success by the consultant on work previously performed for the Agency or similar work performed for others.
- 4. Individuals within the consultant's organization who will have direct charge of work.
- 5. Whether consultant has adequate staff to perform the work within the time allowance.
- 6. The ability of the consultant to make effective public presentations of the report and/or design as may be required.
- 7. The ability of the consultant to work effectively with Agency staff, other public agencies, and related parties as may be required during the course of the design, study or other technical services.
- 8. Where appropriate, whether the consultant has adequate knowledge of local conditions.

9. Whether consultant has available experienced, capable and acceptable resource and design professional personnel as may be pertinent to the particular project.
10. Demonstrated continuing interest by the consultant in the success, efficiency and workability of the project after it has been placed in operation.
11. The record of the consultant in keeping costs within project budgets and estimates.
12. Ability of the consultant to furnish adequate and effective supervision services, where such services are an inherent part of a "package" of services for which the consultant is employed.
13. Ability to obtain applicable insurance or bonding for the project.
14. Overall costs for services, including fee methodology, hourly rates, level of professionals assigned, and hours to complete task.

#### **Section 6. Selection Process.**

To the extent possible and feasible, a Request for Proposal/Qualifications (RFP/Q) process will be used for selection. Consultants interested in a specific project may be screened if a greater number express interest than can be or should be interviewed for the work involved. Interviews and selection shall be conducted by representatives of the Agency staff. Where any project or study is of a special or unusual character, the Executive Director may invite interested citizens and/or appoint other parties to serve on an interview and selection committee.

#### **Section 7. Reports from Consultants for Public Access.**

If the consulting service is for the purpose of producing a report or study, consultants shall make available to the Agency an electronic copy (PDF format) of the final product, which may be posted on the Agency's website for public access.

#### **Section 8. Exceptions.**

To the extent possible and feasible, this process will be used for selection of consultants providing professional services. An RFP/RFQ process is not possible or feasible whenever a determination by the Executive Director is made that the provision of services is time sensitive, an emergency exists, or services must be rendered before an RFP/RFQ process can be completed. Such determinations will be the exception, not the rule. Each determination must be memorialized and maintained in the file for the subject contract.

#### **Section 9. Unsolicited Proposals.**

The Agency is under no obligation to proceed forward, respond to or otherwise consider unsolicited proposals from professional consultants. Should the Agency consider an unsolicited proposal all provisions of this article apply.

#### **Section 10. Regulated Communication in Agency Procurement Process.**

The Agency follows the City of Fresno procurement process/practice where consistent with Community Redevelopment Law including requirements delineated in the following ordinance. The Regulated Communications in City Procurement Process Ordinance (Article 6, Chapter 4 of the Fresno Municipal Code) became effective May 7, 2004. With certain specified exceptions, the Ordinance provides that no Respondent, Bidder, Proposer (as the case may be) shall initiate, engage in, or continue any communication to or with any City elected official concerning or touching upon any matter which is the subject of a competitive procurement process.

Any Respondent, Bidder, Proposer or elected official (as the case may be) who initiates, engages in, continues in, or receives any regulated communication shall file the written disclosure required by the Ordinance.

Any Respondent, Bidder, or Proposer violating the Ordinance may be disqualified from participating in the procurement process and/or determined to be non-responsible. Additionally, the award of a contract may set aside, prior to its execution, where a party is found to have violated the Ordinance.

**Section 11. Debarment.**

A Proposer who has been determined by the Agency Board of Directors to be non-responsible may be debarred from bidding or proposing upon or being awarded any contract with the Fresno Redevelopment Agency, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures in Resolution No. 2003-130 adopted by Council on April 29, 2003. The initial period of any such debarment shall not be less than one year or more than three years. A Proposer may request a hearing, in accordance with Resolution No. 2003-130, upon receipt of a notice of proposed debarment from the Executive Director or his/her designee. A copy of the Resolution may be obtained from the City Clerk's Office, 2600 Fresno Street, Fresno, California 93721.

**ARTICLE VI  
EXCLUSIVE NEGOTIATING AGREEMENT (ENA) POLICIES**

**Section 1. ENA Threshold.** The purpose of an Exclusive Negotiating Agreement is to provide assurance to a Developer that during the ENA period the Agency will not negotiate with another Developer for a project on the same property. ENA's shall be reserved for those projects that meet at least one or more of the following criteria:

- a) The proposed project development costs exceeds \$10 million or more;
- b) The proposed project land area exceeds five acres or more;
- c) The proposed project design and entitlement process will exceed one year;
- d) The proposed project real property acquisition period will exceed one year; and,
- e) The public interest will be best served by using an ENA.

**Section 2. Good faith deposit.** If a project involves the sale of real property owned by the Agency to the Developer, the Agency may, at the sole discretion of the Executive Director,

request a deposit. The deposit represents consideration to the Agency for its loss of economic opportunity for Agency owned parcel(s) during the ENA period and may, at the sole discretion of the Executive Director, be retained by Agency in the event the Developer defaults on the terms of the ENA.

**Section 3. Time and Materials Deposit.** The Developer may be required, at the sole discretion of the Executive Director, to deposit funds to cover estimated charges for legal work, appraisals, and other consulting costs that would be incurred by the Agency on behalf of the project. This deposit would apply to ENA's involving both Agency and non-Agency owned property. The agreement shall contain the terms of the deposits.

**Section 4. Timeline.** Based on the overall scope of the project, a timeline will be developed. The timeline shall be based on a detailed analysis of the proposed project and shall include milestones that will take the Developer and project to the point where a Development Disposition Agreement could be approved, including City's entitlement process and environmental review. The timeline shall reflect the timeframes in the Owner Participation Process as applicable. Project performance standards will be clearly defined in the ENA. Penalties for failure to achieve project performance standards will also be defined in the ENA including cancellation of the ENA and Agency retaining the good faith deposit.

**Section 5. ENA Approval.** The Executive Director shall present the proposed ENA and all supporting documents to the Agency Board for a vote, at a scheduled meeting. A **super majority of five votes** shall be required to approve the ENA.

**Section 6. ENA Extensions.** The Executive Director, in his/her discretion may grant extensions of the overall timeframe up to a cumulative 180 days. A cumulative extension beyond 180 days shall require a majority vote of the Agency Board at a scheduled meeting. In the event of an extension beyond 180 days, the Developer shall deposit funds to cover the cost of staff time in addition to costs disbursed in Section 3.

**Section 7. Transparency.** All final and posted documents, staff reports, consulting reports, pro forma and other reports relating to the proposed ENA, consistent with applicable law, shall be available for public viewing at the Agency's office and also in the City Clerk's office.

## **ARTICLE VII MASTER DEVELOPER NEGOTIATING AGREEMENT POLICIES**

The California Community Redevelopment Law does not provide any specific guidelines for when to use a master Developer and what specific policies to follow when evaluating master Developer negotiation agreements (MDNA). This Policy shall provide the specific guidelines to use when deciding when to use a master Developer and specific policies to be employed in the evaluation of the agreement.

**Section 1. General Criteria.**

A Master Developer Negotiating Agreement shall be considered based on the following general criteria:

1. The proposed project scope exceeds \$100 million;
2. The proposed project land area exceeds 25 acres;
3. The proposed project timeline for completion exceeds three years;
4. The proposed project area includes at least 10 or more properties not owned by the Developer;
5. The proposed scope of the project requires integrated master planning and management;
6. The public interest will be served by using a Master Developer Negotiating Agreement.

**Section 2. Project Evaluation Policies.**

The following outlines the policies for project evaluation:

1. Does the project achieve Agency goals, plans and policies; what is the project's probability of implementation within prescribed timelines?
2. To what degree is cooperation needed from other property owners?
3. Does the Master Developer proposal contain a public outreach program?
4. What CEQA action is needed for the project?
5. Does the project generate the need for additional infrastructure?
6. What is the potential catalytic effect on nearby areas?

**Section 3. Time and Materials Deposit.** The Developer may be required, at the sole discretion of the Executive Director, to deposit funds to cover estimated charges for legal work, appraisals, and other consulting costs that would be incurred by the Agency on behalf of the project. This deposit would apply to MDNA's involving both Agency and non-Agency owned property. The agreement shall contain the terms of the deposits.

**Section 4. Timeline.** Based on the overall scope of the project, a timeline will be developed. The timeline shall be based on a detailed analysis of the proposed project and shall include milestones that will take the Developer and project to the point where a Development Disposition Agreement could be approved, including City's entitlement process and environmental review. The timeline shall reflect the timeframes in the Owner Participation Process as applicable. Project performance standards will be clearly defined in the MDNA. Penalties for failure to achieve project performance standards will also be defined in the MDNA including cancellation of the MDNA and Agency retaining the good faith deposit.

**Section 5. MDNA Approval.** The Executive Director shall present the proposed MDNA and all supporting documents to the Agency Board for a vote, at a regularly scheduled meeting. A super majority of five votes shall be required to approve the MDNA.

**Section 6. MDNA Extensions.** The Executive Director, in his/her discretion may grant extensions of the overall timeframe up to a cumulative 180 days. A cumulative extension beyond 180 days shall require a majority vote of the Agency Board at a scheduled meeting. In

the event of an extension beyond 180 days, the Developer shall deposit funds to cover the cost of staff time in addition to costs disbursed in Section 3.

**Section 7. Transparency.** All final and posted documents, staff reports, consulting reports, pro forma and other reports relating to the proposed MDNA, consistent with applicable law, shall be available for public viewing at the Agency's office and also in the City Clerk's office.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 1. Effective Date.**

This policy shall take effect upon its adoption.

**Section 2. Order of Precedence.** In the event of any conflict between this Policy and the Community Redevelopment Law, plan documents, local law, and Agency Bylaws, the order of precedence shall be Community Redevelopment Law, then plan documents, then local law, then Agency Bylaws, then this Policy.

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**CLERK'S CERTIFICATION**

STATE OF CALIFORNIA )  
COUNTY OF FRESNO )  
CITY OF FRESNO )

I, REBECCA E. KLISCH, Ex Officio Clerk of the Redevelopment Agency of the City of Fresno, certify that the foregoing Resolution was adopted by the Board of the Redevelopment

