

MEMORANDUM OF UNDERSTANDING

Between

The County of Fresno

And

Hacienda Housing LP

THIS MEMORANDUM OF UNDERSTANDING hereinafter referred to as “MOU” or “MOU” is made and entered into this 6th day of August, 2019 by and between the **County of Fresno**, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and **Hacienda Housing LP**, a California Limited Partnership, whose address is 352 West Bedford Avenue, Suite 110, Fresno, California 93711, hereinafter referred to as “HHLP.”

WHEREAS, the State of California, Housing and Community Development (HCD) has made available No Place Like Home (NPLH) Competitive and Noncompetitive funding to California counties.

WHEREAS, The County of Fresno will compete with other California counties for up to \$93 million during four (4) annual HCD NPLH Competitive Allocation funding rounds for the purpose of developing permanent supportive housing for adults, transitional age youth, or children and their families who reside within Fresno County who are Homeless, Chronically Homeless or At-Risk of Chronic Homelessness as a result of their serious mental illness and/or severe emotional disturbance and are in need of mental health services; and

WHEREAS, the HHLP, among other things, coordinates financing, develops and manages supportive housing developments in Fresno County, and;

WHEREAS, the HHLP represents that it is a qualified developer in Fresno County; and

WHEREAS, the parties desire to enter into this MOU, wherein the parties will strive to develop, operate and maintain new permanent supportive housing projects for residents of Fresno County living with severe mental illness and/or serious emotional disturbances and who are Homeless, Chronically Homeless, or At-Risk of Chronic Homelessness, all in accordance with the HCD NPLH program

1 Guidelines; Welfare and Institutions Code Sections 5849 and 5890; and other future supportive housing
2 funding sources, as identified.

3 NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated
4 herein by this reference, and the mutual covenants and undertakings contained herein, the receipt and
5 sufficiency of which is hereby acknowledged, the parties agree as follows:

6 **1. PURPOSE**

7 The COUNTY and HHLP desire to develop, operate and maintain permanent supportive housing
8 opportunities in accordance with permanent supportive housing funding source program guidelines and
9 regulations. To do so, the COUNTY and HHLP will research and pursue permanent supportive housing
10 development opportunities.

11 **2. RESPONSIBILITIES**

12 A. The HHLP shall be responsible to:

13 (1) Under the direction of COUNTY, prepare any future, agreed upon HCD
14 NPLH, or other permanent supportive housing funding sources, permanent supportive housing
15 Application(s). The HCD NPLH permanent supportive housing Application, or any additional permanent
16 supportive housing Applications would include the HHLP as the developer, property manager and owner.
17 However, any role or responsibility of HHLP in the development of any permanent supportive housing
18 program Application related to this MOU shall be determined by COUNTY. Notwithstanding the
19 aforementioned term, HHLP shall be permitted to develop other permanent supportive housing projects,
20 without the consent of the COUNTY or in partnership with the COUNTY, when such projects do not
21 require a financing source predicated on the COUNTY being a co-applicant or sponsor of such financing.
22 Any permanent supportive housing Application mutually agreed upon by both DBH and HHLP, to be
23 completed by the HHLP in the role of development sponsor / co-applicant with COUNTY, shall be
24 approved by the COUNTY and such approval shall not be unreasonably withheld. Any prepared
25 Application(s) by HHLP as COUNTY'S development sponsor / co-applicant shall comply with all state
26 fair housing laws, regulations and directives as required by the identified funding source. As part of any
27 permanent supportive housing program Application, both COUNTY and HHLP shall research and
28 identify potential development sites to be funded with HCD NPLH or other applicable funding sources or

1 identify other funding sources that can be utilized and/or leveraged to provide for the development of
2 permanent supportive housing units.

3 (2) Maintain supportive housing resource information for use by individuals
4 housed, family members and/or support systems of individuals and supportive services staff to assist in
5 the identification and utilization of appropriate supportive housing resources in the community.

6 (3) Make reasonable efforts to complete all program-reporting requirements
7 specific to each funding source for any permanent supportive housing developments resulting from this
8 MOU.

9 (4) Provide property management services, either directly or through a
10 subcontract with a qualified organization, for permanent supportive housing projects developed as a
11 result of this MOU. Services may include, but not be limited to rent collection, property maintenance and
12 repairs.

13 B. The COUNTY shall be responsible to:

14 (1) Assign appropriate staff to participate in the planning and permanent
15 supportive housing development process with the HHLF.

16 (2) Provide timely consideration of all permanent supportive housing
17 Applications presented by the HHLF.

18 (3) Report required permanent supportive housing program information to the
19 State of California HCD, and any other identified funding sources, as related to any permanent supportive
20 housing developments as a result of this MOU.

21 (4) Upon request from the HHLF, provide all necessary or relevant
22 demographic information regarding the specified target populations to be served by permanent supportive
23 housing developments as a result of this MOU.

24 (5) Ensure an adequate number of eligible, certified tenant referrals made to
25 permanent supportive housing projects developed by the HHLF under this MOU. Such referrals must
26 meet the tenant eligibility requirements established for any given permanent supportive housing
27 development as mandated by the funding source target population definition and as determined by Fresno
28 County's Behavioral Health Director or designee, or by other funding sources, as applicable.

1 (6) Ensure the commitment and coordination of the appropriate level of case
2 management or other types of supportive services are available on a timely basis to meet the behavioral
3 health needs for individuals of any permanent supportive housing projects developed under this MOU.
4 These services will be voluntary and flexible and meet the needs as determined by the individuals.

5 C. In collaboration, both COUNTY and HHLP shall be responsible to:

6 (1) No less than quarterly, representatives from COUNTY, HHLP and other
7 interested and invited participants will meet to discuss any potential new development projects, review
8 any previous work accomplished and assess the working relationship between all parties. The COUNTY
9 and HHLP shall mutually agree upon the location of the permanent supportive housing developments
10 proposed for permanent supportive housing program Applications.

11 (2) In the event a permanent supportive housing Application is completed by
12 HHLP, that it be appropriately submitted to the applicable funding source and meet all legal
13 requirements, including the provisions of Welfare and Institutions Code Sections 5847 and 5848
14 regarding postings and 30-day public comment requirement (W&I Code 5848(b)). Additionally, if a
15 permanent supportive housing Application is completed and submitted to a funding source, ensure all
16 appropriate parties are informed of the submittal, including the Fresno County Behavioral Health Board
17 and Fresno County Board of Supervisors.

18 (3) In the event a permanent supportive housing Application is funded, County
19 and HHLP shall work collaboratively to ensure all necessary documents, including any other MOUs as
20 required by the funding source, are executed to establish the role of the HHLP as the qualified
21 developer/borrower/property manager or any combination thereof, and to establish the role of the
22 COUNTY as the mental health supportive service provider, for any funded permanent supportive housing
23 development.

24 **3. TERM**

25 This MOU shall commence July 1, 2019 and shall terminate on the 30th day of June 2022.
26 This MOU may be extended for two (2) additional consecutive twelve (12) month periods; July 1, 2022
27 through June 30, 2023 and July 1, 2023 through June 30, 2024, upon the written approval of both parties
28 no later than sixty (60) days prior to the first day of the next twelve (12) month extension period. The

1 Department of Behavioral Health ("DBH") Director or his/her designee is authorized to execute such
2 written approval on behalf of COUNTY based upon HHL P's satisfactory performance.

3 **4. TERMINATION**

4 A. Breach of Contract

5 Either party may immediately suspend or terminate this MOU in whole or in
6 part, where in the determination by one of the parties there is:

- 7 1. An illegal or improper use of funds;
- 8 2. A failure to comply with any term of this MOU;
- 9 3. A substantially incorrect or incomplete report submitted to the
10 COUNTY; or
- 11 4. Improperly performed service.

12 B. Without Cause

13 This MOU may be terminated by either of the parties as to their involvement in
14 this MOU, upon the giving of a thirty (30) day advance written notice of an intention to terminate from
15 one party to the other.

16 **5. COMPENSATION**

17 The services performed in accordance with the terms and conditions as stated in this
18 MOU shall be performed without any monetary compensation by either party, with exception to any
19 compensation that may be payable to either party in relation to the development of a specific project, or
20 the proceeds therefrom, whether from such money is payable as a fee, project cash flow, the result of a
21 refinancing, or transaction of a similar nature.

22
23 **6. MODIFICATION**

24 Any matters of this MOU may be modified from time to time by the written consent of all
25 the parties without, in any way, affecting the remainder.

26 Notwithstanding the above, minor changes, as determined by COUNTY's Department
27 of Behavioral Health Director or his or her designee may be made with the written approval of
28 COUNTY's Department of Behavioral Health Director or designee and HHL P. Minor changes may

1 include, but are not limited to, changes that will not significantly alter the responsibilities identified in
2 this MOU, and changes to addresses to which notices are to be sent.

3 **7. INDEPENDENT CONTRACTOR**

4 In performance of the work, duties, and obligations assumed by HHLP under this MOU, it
5 is mutually understood and agreed that HHLP, including any and all of HHLP's officers, agents, and
6 employees will at all times be acting and performing as an independent contractor, and shall act in an
7 independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate
8 of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the
9 manner or method by which HHLP shall perform its work and function. However, COUNTY shall
10 retain the right to administer this MOU so as to verify that HHLP is performing its obligations in
11 accordance with the terms and conditions thereof.

12 HHLP and COUNTY shall comply with all applicable provisions of law and the rules and
13 regulations, if any, of governmental authorities having jurisdiction over matters which are directly or
14 indirectly the subject of this MOU.

15 Because of its status as an independent contractor, HHLP shall have absolutely no right to
16 employment rights and benefits available to COUNTY employees. HHLP shall be solely liable and
17 responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
18 addition, HHLP shall be solely responsible and hold COUNTY harmless from all matters relating to
19 payment of HHLP's employees, including compliance with Social Security, withholding, and all other
20 regulations governing such matters. It is acknowledged that during the term of this MOU, HHLP may
21 be providing services to others unrelated to the COUNTY or to this MOU.

22 **8. ASSIGNMENT RIGHTS**

23 Neither party shall assign, transfer or subcontract this MOU nor their rights or duties
24 under this MOU without the prior written consent of the other party with the exception of an affiliate or
25 limited partnership within a tax credit transaction. Notwithstanding the aforementioned, HHLP may
26 assign its rights, obligations, and interest in this MOU to any entity it wholly owns or controls without
27 the consent of the County. Any transferee, assignee, or subcontractor will be subject to all applicable
28 provisions of this MOU, and all applicable State and Federal regulations. HHLP will be required to

1 assume full responsibility for all services and activities covered by this MOU, whether or not HHLP is
2 providing those services directly. Further, COUNTY will consider HHLP to be the sole point of contact
3 with regard to contractual matters, including payment of any and all charges to subcontractor resulting
4 from this MOU. Any subcontractor utilized by HHLP to fulfill the Responsibilities of HHLP shall be
5 subject to the same terms and conditions that HHLP is subject to under this MOU.

6 **9. NON-DISCRIMINATION**

7 During the performance of this MOU HHLP shall not unlawfully discriminate against any
8 employee or applicant for employment, or recipient of services, because of race, religion, color, national
9 origin, ancestry, physical disability, medical condition, marital status, age or gender, pursuant to all
10 applicable State of California and Federal statutes and regulations.

11 **10. DISCLOSURE – CRIMINAL HISTORY AND CIVIL ACTIONS**

12 HHLP is required to disclose if any of the following conditions apply to them, their
13 owners, officers, corporate managers and partners:

14 A. Within the three-year period preceding the MOU award, they have been
15 convicted of, or had a civil judgment rendered against them for:

- 16 1. Fraud or a criminal offense in connection with obtaining, attempting to
17 obtain, or performing a public transaction or contract under a public transaction;
- 18 2. Violation of a federal or state antitrust statute;
- 19 3. Embezzlement, theft, forgery, bribery, falsification, or destruction of
20 records; or
- 21 4. False statements or receipt of stolen property.

22 B. Within a three-year period preceding this MOU, they have had a public
23 transaction terminated for cause or default.

24 Disclosure of the above information will not automatically eliminate HHLP from further
25 business consideration. The information will be considered as part of the determination of whether to
26 continue and/or renew the MOU and any additional information or explanation that HHLP elects to
27 submit with the disclosed information will be considered. If it is later determined the HHLP failed to
28

1 disclose required information, any MOU awarded to HHLP may be immediately voided and
2 terminated for material failure to comply with the terms and conditions of the MOU.

3 **11. COMPLAINTS**

4 For any complaint associated with this MOU, the HHLP shall log such complaints from a tenant
5 residing at a permanent supportive housing development resulting from this MOU. HHLP shall make
6 available to COUNTY a copy of the complaint concerning any tenants in a format and timeframe that is
7 mutually agreed upon by both parties. The HHLP shall provide details and attach documentation of
8 each tenant complaint. The HHLP shall post signs at permanent supportive housing developments
9 resulting from this MOU that informs tenants of their right to file a complaint or grievance with the
10 HHLP which is a component of the tenant's rights grievance procedure associated with each tenant's
11 formal signed lease with the HHLP.

12 **12. NOTICES**

13 The persons have authority to give and receive notices under this MOU and their
14 addresses include the following:

15 **COUNTY**

16 Director, Fresno County
17 Department of Behavioral Health
18 4441 E. Kings Canyon
19 Fresno, CA. 93702

20 **HHL P**

21 Brad Hardie
22 Hacienda Housing LP
23 352 West Bedford Ave Suite 110
24 Fresno, CA. 93711

25 Any and all notices between the COUNTY and the HHLP provided for or permitted under this
26 MOU or by law shall be in writing and shall be deemed duly served when personally delivered to one of
27 the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid,
28 addressed to such party

29 **13. SEVERABILITY**

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

32 **14. HOLD HARMLESS**

33 HHLP agrees to indemnify, save, hold harmless, and at COUNTY's request, defend the
34 COUNTY, its officers, agents and employees from any and all costs and expenses, including attorney

1 fees and court costs, damages, liabilities, claims and losses occurring or resulting to COUNTY in
2 connection with the performance, or failure to perform, by HHLP, its officers, agents or employees
3 under this MOU, and from any and all costs and expenses, including attorney fees and court costs,
4 damages, liabilities, claims and losses occurring or resulting to any person, firm or corporation who
5 may be injured or damaged by the performance, or failure to perform, of HHLP, its officers, agents or
6 employees under this MOU. In addition, HHLP agrees to indemnify COUNTY for Federal, State of
7 California and/or local audit exceptions resulting from noncompliance herein on the part of the HHLP.

8 COUNTY agrees to indemnify, save, hold harmless, and at HHLP's request, defend the
9 HHLP, its officers, agents and employees from any and all costs and expenses, including attorney fees
10 and court costs, damages, liabilities, claims and losses occurring or resulting to HHLP in connection with
11 the performance, or failure to perform, by COUNTY and/or its officers, agents or employees under this
12 MOU and from any and all costs and expenses, including attorney fees and court costs, damages,
13 liabilities, claims and losses occurring or resulting to any person, firm or corporation who may be injured
14 or damaged by the performance, or failure to perform, of COUNTY and/or its officers, agents or
15 employees under this MOU. In addition, COUNTY agrees to indemnify HHLP for Federal, State of
16 California and/or local audit exceptions resulting from noncompliance herein on the part of the COUNTY
17 and/or its contracted providers.

18 **15. INSURANCE**

19 Without limiting the COUNTY's right to obtain indemnification from the HHLP or any third
20 parties, HHLP, at its sole expense, shall maintain in full force and effect the following insurance
21 policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement
22 or Joint Powers MOU (JPA) throughout the term of this MOU:

23 A. **Commercial General Liability**

24 Commercial General Liability Insurance with limits of not less than One Million Dollars
25 (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This
26 policy shall be issued on a per occurrence basis. COUNTY may require specific coverage including
27 completed operations, product liability, contractual liability, Explosion, Collapse, and Underground
28

1 (XCU), fire legal liability or any other liability insurance deemed necessary because of the nature of
2 the MOU.

3 B. Automobile Liability

4 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
5 (\$1,000,000) per accident for bodily injury and for property damage. Coverage should include owned
6 and non-owned vehicles used in connection with this MOU.

7 C. Professional Liability

8 The HHLP does not anticipate to employ any licensed professional staff (*e.g.* Ph.D., R.N.,
9 L.C.S.W., L.M.F.T.) to provide services. But if HHLP does employ any licensed professional, HHLP
10 will provide Professional Liability Insurance with limits of not less than One Million Dollars
11 (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate.

12 D. Worker's Compensation

13 A policy of Worker's Compensation Insurance as may be required by the California Labor
14 Code.

15 Additional Requirements Relating to Insurance

16 HHLP shall obtain endorsements to the Commercial General Liability insurance naming
17 the COUNTY, its officers, agents and employees, individually and collectively, as additional insured,
18 but only insofar as the operations under this MOU are concerned. Such coverage for additional
19 insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by the
20 COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
21 provided under the HHLP's policies herein. This insurance shall not be cancelled or changed without
22 a minimum of thirty (30) days advance written notice given to COUNTY.

23 HHLP hereby waives its right to recover from COUNTY, its officers, agents, and
24 employees any amounts paid by the policy of worker's compensation insurance required by this MOU.
25 HHLP is solely responsible to obtain any endorsement to such policy that may be necessary to
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27
28

1 accomplish such waiver of subrogation, but HHLP's waiver of subrogation under this paragraph is
2 effective whether or not HHLP obtains such an endorsement.

3 Within thirty (30) days from the date HHLP signs this MOU, HHLP shall provide
4 certificates of insurance and endorsements as stated above for all of the foregoing policies, as required
5 herein, to the County of Fresno, Department of Behavioral Health, 515 S. Cedar Avenue, Fresno CA.
6 94702, Attention: Staff Analyst - Housing, stating that such insurance coverages have been obtained
7 and are in full force; that the COUNTY, its officers, agents and employees will not be responsible for
8 any premiums on the policies; that for such worker's compensation insurance the HHLP has waived
9 its right to recover from the COUNTY, its officers, agents, and employees any amounts paid under the
10 insurance policy and that waiver does not invalidate the insurance policy; that such Commercial
11 General Liability insurance names the COUNTY, its officers, agents and employees, individually and
12 collectively, as additional insured, but only insofar as the operations under this MOU are concerned;
13 that such coverage for additional insured shall apply as primary insurance and any other insurance, or
14 self-insurance, maintained by the COUNTY, its officers, agents and employees, shall be excess only
15 and not contributing with insurance provided under the HHLP's policies herein; and that this
16 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written
17 notice given to COUNTY.

18 In the event HHLP fails to keep in effect at all times insurance coverage as herein
19 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
20 MOU upon the occurrence of such event.

21 All policies shall be with admitted insurers licensed to do business in the State of
22 California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating of
23 A FSC VIII or better.

24 **16. CONFIDENTIALITY**

25 Any service performed by HHLP under this MOU shall be in strict conformance with all
26 applicable Federal, State of California (including the California Public Records Act) and/or local laws
27 and regulations relating to confidentiality.
28

1 **17. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

2 A. The parties to this MOU shall be in strict conformance with all applicable
3 Federal and State of California laws and regulations, including but not limited to Sections 5328,
4 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of
5 Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, Sections
6 11977 and 11812 of Title 22 of the California Code of Regulations, and the Health Insurance
7 Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of
8 Title 42, United States Code (USC) and its implementing regulations, including, but not limited to
9 Title 45, CFR, Sections 142, 160, 162, and 164, and The Health Information Technology for
10 Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient
11 information and the Genetic Information Nondiscrimination Act (GINA) of 2008 regarding the
12 confidentiality of genetic information.

13 Except as otherwise provided in this MOU, the HHLP, as Business Associates of
14 COUNTY, may use or disclose Protected Health Information (PHI) to perform functions, activities or
15 services for or on behalf of COUNTY, as specified in this MOU, provided that such use or disclosure
16 shall not violate the HIPAA, USC 1320d *et seq.* The uses and disclosures of PHI may not be more
17 expansive than those applicable to COUNTY, as the “Covered Entity” under the HIPAA Privacy Rule
18 (45 CFR 164.500 *et seq.*), except as authorized for management, administrative or legal responsibilities
19 of the Business Associate.

20 B. HHLP, including its subcontractors, agents, and employees, shall protect, from
21 unauthorized access, use, or disclosure of names and other identifying information concerning persons
22 receiving services pursuant to this MOU, except where permitted in order to carry out data aggregation
23 purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and
24 164.504 (e)(4)(i)]. This pertains to any and all persons receiving services pursuant to a COUNTY
25 funded program. HHLP shall not use such identifying information for any purpose other than carrying
26 out HHLP’s obligations under this MOU.

27 C. HHLP, including its subcontractors, agents, and employees, shall not disclose
28 any such identifying information to any person or entity, except as otherwise specifically permitted by

1 this MOU, authorized by law, or authorized by the client/patient.

2 D. For purposes of the above sections, identifying information shall include, but not
3 be limited to name, identifying number, symbol, or other identifying particular assigned to the
4 individual, such as finger or voice print, or a photograph.

5 E. For purposes of the above sections, genetic information shall include genetic
6 tests of family members of an individual or individual, manifestation of disease or disorder of family
7 members of an individual, or any request for or receipt of, genetic services by individual or family
8 members. Family member means a dependent or any person who is first, second, third, or fourth
9 degree relative. For purposes of the above sections, identifying information shall include, but not be
10 limited to name, identifying number, symbol, or other identifying particular assigned to the individual,
11 such as finger or voice print, or a photograph.

12 F. HHL P shall provide access, at the request of COUNTY, and in the time and
13 manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR Section
14 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR
15 Section 164.524 regarding access by individuals to their PHI.

16 HHL P shall make any amendment(s) to PHI in a designated record set at the request of
17 COUNTY, and in the time and manner designated by COUNTY in accordance with 45 CFR Section
18 164.526.

19 HHL P shall provide to COUNTY or to an individual, in a time and manner designated
20 by COUNTY, information collected in accordance with 45 CFR Section 164.528, to permit COUNTY
21 to respond to a request by the individual for an accounting of disclosures of PHI in accordance with 45
22 CFR Section 164.528.

23 G. HHL P shall report to COUNTY, in writing, any knowledge or reasonable belief
24 that there has been unauthorized access, viewing, use, disclosure, or breach of PHI not permitted by
25 this MOU, and any breach of unsecured PHI of which it becomes aware, immediately and without
26 reasonable delay and in no case later than two (2) business days of discovery. Immediate notification
27 shall be made to COUNTY's Information Security Officer and Privacy Officer and COUNTY's
28 Department of Behavioral Health HIPAA Representative, within two (2) business days of discovery.

1 The notification shall include, to the extent possible, the identification of each individual whose
2 unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or
3 breached. HHLP shall take prompt corrective action to cure any deficiencies and any action pertaining
4 to such unauthorized disclosure required by applicable Federal and State Laws and regulations. HHLP
5 shall investigate such breach and is responsible for all notifications required by law and regulation or
6 deemed necessary by COUNTY and shall provide a written report of the investigation and reporting
7 required to COUNTY's Information Security Officer and Privacy Officer and COUNTY's Department
8 of Behavioral Health HIPAA Representative. This written investigation and description of any
9 reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the
10 breach to the addresses below:

<u>County of Fresno</u>	<u>County of Fresno</u>	<u>County of Fresno</u>
Dept. of Behavioral Health HIPAA Representative (559) 600-9180 4441 E. Kings Canyon Fresno, CA 93702	Dept. of Public Health Privacy Officer (559) 600-3200 1221 Fulton Mall Fresno, CA 93728	Information Technology Services Information Security Officer (559) 600-5800 2048 N. Fine Street Fresno, CA 93727

15 H. HHLP shall make its internal practices, books, and records relating to the use and
16 disclosure of PHI received from COUNTY, or created or received by the HHLP on behalf of
17 COUNTY, available to the United States Department of Health and Human Services upon demand.

18 I. Safeguards

19 HHLP shall implement administrative, physical, and technical safeguards as
20 required by 45 CFR 164.308, 164.310, and 164.312 that reasonably and appropriately protect the
21 confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives,
22 maintains or transmits on behalf of COUNTY; and to prevent access, use or disclosure of PHI other
23 than as provided for by this MOU. HHLP shall develop and maintain a written information privacy
24 and security program that includes administrative, technical and physical safeguards appropriate to the
25 size and complexity of HHLP's operations and the nature and scope of its activities. Upon
26 COUNTY's request, HHLP shall provide COUNTY with information concerning such safeguards.

27 HHLP shall implement strong access controls and other security safeguards and
28 precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or

1 sensitive data to authorized users only. Said safeguards and precautions shall include the following
2 administrative and technical password controls for all systems used to process or store confidential,
3 personal, or sensitive data:

4 1. Passwords must not be:

5 a. Shared or written down where they are accessible or recognizable
6 by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;

7 b. A dictionary word; or

8 c. Stored in clear text

9 2. Passwords must be:

10 a. Eight (8) characters or more in length;

11 b. Changed every ninety (90) days;

12 c. Changed immediately if revealed or compromised; and

13 d. Composed of characters from at least three of the following four
14 groups from the standard keyboard:

15 1) Upper case letters (A-Z);

16 2) Lowercase letters (a-z);

17 3) Arabic numerals (0 through 9); and

18 4) Non-alphanumeric characters (punctuation symbols).

19 HHLP shall implement the following security controls on each workstation or
20 portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

21 1. Network-based firewall and/or personal firewall;

22 2. Continuously updated anti-virus software; and

23 3. Patch management process including installation of all operating
24 system/software vendor security patches.

25 HHLP shall utilize a commercial encryption solution that has received FIPS 140-
26 2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media
27 (including, but not limited to, compact disks and thumb drives) and on portable computing devices
28 (including, but not limited to, laptop and notebook computers).

1 HHLP shall not transmit confidential, personal, or sensitive data via e-mail or
2 other internet transport protocol unless the data is encrypted by a solution that has been validated by
3 the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption
4 Standard (AES) Algorithm.

5 J. Mitigation of Harmful Effects

6 HHLP shall mitigate, to the extent practicable,
7 any harmful effect that is known to HHLP of an unauthorized access, viewing, use, disclosure, or
8 breach of PHI by HHLP or its subcontractors in violation of the requirements of these provisions.

9 K. HHLP's Subcontractors

10 HHLP shall ensure that any of its contractors, including subcontractors, if
11 applicable, to whom HHLP provides PHI received from or created or received by HHLP on behalf of
12 COUNTY, agree to the same restrictions and conditions that apply to HHLP with respect to such PHI;
13 and to incorporate, when applicable, the relevant provisions of these provisions into each subcontract
14 or sub-award to such agents or subcontractors.

15 L. Employee Training and Discipline

16 HHLP shall train and use reasonable measures to ensure compliance with the
17 requirements of these provisions by employees who assist in the performance of functions or activities
18 on behalf of COUNTY under this MOU and use or disclose PHI and discipline such employees who
19 intentionally violate any provisions of these provisions, including termination of employment.

20 M. Termination for Cause

21 Upon the knowledge by any party of a material breach of these provisions by one
22 of the other parties, the affected party shall either:

23 1. Provide an opportunity for the party that caused the breach to cure the
24 breach or end the violation and terminate this MOU if that party does not cure the breach or end the
25 violation within the time specified by the affected party; or

26 2. Immediately terminate this MOU if any party has breached a material
27 term of these provisions and cure is not possible.

28 3. If neither cure nor termination is feasible, the COUNTY Privacy Officer

1 or the HHLP designee(s) shall report the violation to the Secretary of the U.S. Department of Health
2 and Human Services.

3 N. Judicial or Administrative Proceedings

4 Any party may terminate this MOU in accordance with the terms and conditions
5 of this MOU as written hereinabove, if: (1) Any party is found guilty in a criminal proceeding for a
6 violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a finding or stipulation
7 that COUNTY or HHLP has violated a privacy or security standard or requirement of the HITECH
8 Act, HIPAA; or other security or privacy laws in an administrative or civil proceeding in which
9 COUNTY and HHLP is a party.

10 O. Effect of Termination

11 Upon termination or expiration of this MOU for any reason, HHLP shall return
12 or destroy all PHI received from COUNTY (or created or received by HHLP on behalf of COUNTY)
13 that HHLP still maintain in any form, and shall retain no copies of such PHI. If return or destruction
14 of PHI is not feasible, HHLP shall continue to extend the protections of these provisions to such
15 information, and limit further use of such PHI to those purposes that make the return or destruction of
16 such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or
17 agents, if applicable, of HHLP. If HHLP destroy the PHI data, a certification of date and time of
18 destruction shall be provided to the COUNTY by HHLP.

19 P. Disclaimer

20 COUNTY makes no warranty or representation that compliance by HHLP with
21 these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or satisfactory
22 for HHLP's own purposes or that any information in HHLP's possession or control, or transmitted or
23 received by HHLP, is or will be secure from unauthorized access, viewing, use, disclosure, or breach.
24 HHLP is solely responsible for all decisions made by HHLP regarding the safeguarding of PHI.

25 Q. Amendment

26 The parties acknowledge that Federal and State laws relating to electronic data
27 security and privacy are rapidly evolving and that amendment of these provisions may be required to
28 provide for procedures to ensure compliance with such developments. The parties specifically agree

1 to take such action as is necessary to amend this MOU in order to implement the standards and
2 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating
3 to the security or privacy of PHI. COUNTY may terminate this MOU upon thirty (30) days written
4 notice in the event that HHLP do not enter into an amendment providing assurances regarding the
5 safeguarding of PHI that COUNTY in its sole discretion deems sufficient to satisfy the standards and
6 requirements of HIPAA, the HIPAA regulations and the HITECH Act.

7 R. No Third-Party Beneficiaries

8 Nothing express or implied in the terms and conditions of these provisions is
9 intended to confer, nor shall anything herein confer, upon any person other than COUNTY or HHLP
10 and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

11 S. Interpretation

12 The terms and conditions in these provisions shall be interpreted as broadly as
13 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws.
14 The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved
15 in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

16 T. Regulatory References

17 A reference in the terms and conditions of these provisions to a section in the
18 HIPAA regulations means the section as in effect or as amended.

19 U. Survival

20 The respective rights and obligations of HHLP as stated in this Section shall
21 survive the termination or expiration of this MOU.

22 V. No Waiver of Obligations

23 No change, waiver or discharge of any liability or obligation hereunder on any
24 one or more occasions shall be deemed a waiver of performance of any continuing or other obligation,
25 or shall prohibit enforcement of any obligation on any other occasion.

26 **18. DATA SECURITY**

27 For the purpose of preventing the potential loss, misappropriation or inadvertent access,
28 viewing, use or disclosure of COUNTY data including sensitive or personal client information; abuse

1 of COUNTY resources; and/or disruption to COUNTY operations, individuals and/or agencies that
2 enter into a contractual relationship with the COUNTY for the purpose of providing services under
3 this MOU must employ adequate data security measures to protect the confidential information
4 provided to HHLP by the COUNTY, including but not limited to the following:

5 A. HHLP-Owned Mobile, Wireless, or Handheld Devices

6 HHLP may not connect to COUNTY networks via personally-owned mobile,
7 wireless or handheld devices, unless the following conditions are met:

- 8 1) HHLP has received authorization by COUNTY for
- 9 telecommuting purposes;
- 10 2) Current virus protection software is in place;
- 11 3) Mobile device has the remote wipe feature enabled; and
- 12 4) A secure connection is used.

13 B. HHLP-Owned Computers or Computer Peripherals

14 HHLP may not bring HHLP-owned computers or computer peripherals into the
15 COUNTY for use without prior authorization from the COUNTY's Chief Information Officer, and/or
16 designee(s), including but not limited to mobile storage devices. If data is approved to be transferred,
17 data must be stored on a secure server approved by the COUNTY and transferred by means of a
18 Virtual Private Network (VPN) connection, or another type of secure connection. Said data must be
19 encrypted.

20 C. COUNTY-Owned Computer Equipment

21 HHLP or anyone having an employment relationship with the COUNTY may
22 not use COUNTY computers or computer peripherals on non-COUNTY premises without prior
23 authorization from the COUNTY's Chief Information Officer, and/or designee(s).

24 D. HHLP may not store COUNTY's private, confidential or sensitive data on any
25 hard-disk drive, portable storage device, or remote storage installation unless encrypted.

26 E. HHLP shall be responsible to employ strict controls to ensure the integrity and
27 security of COUNTY's confidential information and to prevent unauthorized access, viewing, use or
28 disclosure of data maintained in computer files, program documentation, data processing systems, data

1 files and data processing equipment which stores or processes COUNTY data internally and
2 externally.

3 F. Confidential client information transmitted to one party by the other by means of
4 electronic transmissions must be encrypted according to Advanced Encryption Standards (AES) of
5 128 BIT or higher. Additionally, a password or pass phrase must be utilized.

6 G. HHLP is responsible to immediately notify COUNTY of any violations,
7 breaches or potential breaches of security related to COUNTY's confidential information, data
8 maintained in computer files, program documentation, data processing systems, data files and data
9 processing equipment which stores or processes COUNTY data internally or externally.

10 H. COUNTY shall provide oversight to HHLP's response to all incidents arising from
11 a possible breach of security related to COUNTY's confidential client information provided to HHLP.
12 The HHLP will be responsible to issue any notification to affected individuals as required by law or as
13 deemed necessary by COUNTY in its sole discretion. HHLP will be responsible for all costs incurred as
14 a result of providing the required notification.

15 **19. AUDITS AND INSPECTIONS**

16 The HHLP shall at any time during business hours, and as often as the COUNTY may
17 deem necessary, make available to the COUNTY for examination all of its records and data with respect
18 to the matters covered by this MOU. The HHLP shall, upon request by the COUNTY, permit the
19 COUNTY to audit and inspect all such records and data necessary to ensure the HHLP's compliance
20 with the terms of this MOU.

21 The COUNTY shall at any time during business hours, and as often as the HHLP may
22 deem necessary, make available to the HHLP for examination all of its records and data with respect
23 to the matters covered by this MOU. The COUNTY shall, upon request by the HHLP, permit the HHLP to
24 audit and inspect all such records and data necessary to ensure the COUNTY's compliance with the terms
25 of this MOU.

26 If this MOU exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject
27 to the examination and audit of the Auditor General for a period of three (3) years after final payment
28 under contract (Government Code Section 8546.7).

1 **20. DISCLOSURE OF SELF – DEALING TRANSACTIONS**

2 Only applicable if the HHLP is operating as a corporation (a for-profit or non-profit
3 corporation) or the HHLP changes its status to operate as a corporation during this MOU.

4 Members of the HHLP’s Board of Directors shall disclose any self-dealing transactions that
5 they are a party to while the HHLP is providing goods or performing services under this MOU. A self-
6 dealing transaction shall mean a transaction to which the HHLP is a party and in which one or more of its
7 directors has a material financial interest. Members of the HHLP Board of Directors shall disclose any
8 self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction*
9 *Disclosure Form* (Exhibit A) and submitting it to the COUNTY prior to commencing with the self-dealing
10 transaction or immediately thereafter.

11 **21. NON-EXCLUSIVE MOU**

12 No provisions of this MOU shall preclude COUNTY from entering into other MOU’s
13 with other parties for supportive housing related programs and services.

14 **22. GOVERNING LAWS**

15 The parties agree that for the purposes of venue, performance under this MOU is to be in
16 Fresno County, California.

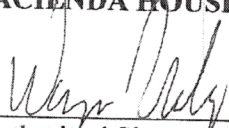
17 The rights and obligations of the parties and all interpretation and performance of this
18 MOU shall be governed in all respects by the laws of the State of California.

19 **24. ENTIRE MOU**

20 This MOU and all exhibits constitutes the entire MOU between the HHLP and
21 COUNTY with respect to the subject matter hereof and supersedes all previous MOUs negotiations,
22 proposals, commitments, writings, advertisements, publications, and understandings of any nature
23 whatsoever unless expressly included in this MOU.

1
2 IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and
3 year first hereinabove written.

4 **HACIENDA HOUSING LP**

5
6 
7 _____
(Authorized Signature)

8
9 Wayne Rutledge, Limited Partner


10 Print Name & Title

11
12 352 W. Bedford Ave, Suite 110

13 Fresno, CA. 93711

14 Mailing Address
15
16
17

COUNTY OF FRESNO

18 
19 _____
Nathan Magsig,
Chairman of the Board of Supervisors of
the County of Fresno

20 **ATTEST:**
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

21
22 Susan Bishop
23 Deputy

24
25
26
27 Fund: 0001/10000
Organization: 56304710
28 Account: 7295

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as “County”), members of a contractor’s board of directors (hereinafter referred to as “County Contractor”), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

“A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest”

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member’s name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member’s company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation’s transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	