

MEMORANDUM OF UNDERSTANDING**Between****The County of Fresno****And****The Fresno Housing Authority**

THIS MEMORANDUM OF UNDERSTANDING hereinafter referred to as "MOU" or "Agreement" is made and entered into this 29th day of January, 2019 (the "Effective Date") by and between the **County of Fresno**, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and **The Fresno Housing Authority**, hereinafter referred to as "FHA."

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

WHEREAS, The County of Fresno will compete with other California counties for up to \$92 million in the first of four (4) annual funding rounds for HCD NPLH financing for the purpose of developing permanent supportive housing for adults, transitional age youth, or children and their families who reside within Fresno County and 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 Mental Health Services Act, Special Needs Housing Program (SNHP), which is administered by the California Housing Finance Agency (CalHFA), allows local governments, such as the COUNTY, to use Mental Health Services Act (MHSA) and other local funds to commit financing for SNHP housing units for individuals with serious mental illness, and their families, who are Homeless or at risk of Homelessness;

WHEREAS, the State of California will make available to COUNTY \$6,168,706 (Six million one hundred sixty-eight thousand seven hundred and six dollars) in MHSA SNHP funds, and \$2,183,000 (Two million one hundred eighty-three thousand dollars) in Non-Competitive NPLH funds from the State of California;

1 **WHEREAS**, by this MOU, the FHA is requesting and the COUNTY commits to allocate up to
2 \$6,168,706 (Six million one hundred sixty-eight thousand seven hundred and six dollars) in SNHP funds
3 and up to \$2,183,000 (Two million one hundred eighty-three thousand dollars) of Non-Competitive
4 NPLH funds to develop a minimum of 39 SNHP housing and 15 NPLH units;

5 **WHEREAS**, the FHA, among other things, coordinates financing, develops and manages
6 supportive housing developments in Fresno County, and;

7 **WHEREAS**, the FHA previously partnered with Fresno County in the development of permanent
8 supportive housing utilizing MHSA financing, which resulted in the Renaissance developments of
9 Trinity, Alta Monte and Santa Clara; providing permanent supportive housing for homeless individuals
10 living with a severe mental illness who reside within Fresno County; and

11 **WHEREAS**, the FHA represents that it is a qualified developer and borrower of permanent
12 supportive housing developments in Fresno County; and

13 **WHEREAS**, COUNTY and FHA previously entered into two (2) separate agreements to develop
14 permanent supportive housing (County Agreement # 08-114 and # 12-445) which expired by their own
15 terms June 30, 2012 and June 30 2015, respectively; and

16 **WHEREAS**, the parties desire to enter into this new Agreement, wherein the parties will develop,
17 operate and maintain new permanent supportive housing projects for residents of Fresno County living
18 with severe mental illness and/or serious emotional disturbances and who are Homeless, Chronically
19 Homeless, or At-Risk of Chronic Homelessness, all in accordance with the HCD NPLH program
20 Guidelines; Welfare and Institutions Code Sections 5849 and 5890; the MHSA Housing Guidelines; the
21 SNHP; and other future permanent supportive housing funding sources, as identified.

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

25 **1. PURPOSE**

26 The COUNTY and FHA desire to develop, operate and maintain permanent supportive housing
27 opportunities in accordance with supportive housing funding source program guidelines and regulations.
28

To do so, the COUNTY and FHA will research and pursue permanent supportive housing development opportunities.

2. RESPONSIBILITIES

A. The FHA shall be responsible to:

(1) Under the direction of COUNTY, prepare any future, agreed upon HCD NPLH, or other permanent supportive housing funding sources, supportive housing application(s). The HCD NPLH supportive housing application, SNHP, and any additional supportive housing applications would include the FHA as the developer, property manager and owner; however, any role or responsibility of FHA in any supportive housing program application shall be determined by COUNTY. Any supportive housing application completed by the FHA shall be approved by the COUNTY and such approval shall not be unreasonably withheld. The Application(s) shall comply with all state fair housing laws, regulations and directives as required by the funding source, i.e. HCD NPLH, SNHP, MHSA, etc. As part of any supportive housing program application process, both COUNTY and FHA shall research and identify potential housing sites to be funded with HCD NPLH or SNHP funds and/or other applicable funding sources or identify other funding sources that can be utilized and/or leveraged to provide for the development of permanent supportive housing units.

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

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

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

B. The COUNTY shall be responsible to:

(1) Assign appropriate staff to participate in the planning and housing development process with the FHA.

1 (2) Timely consider and approve all supportive housing applications presented
2 by the FHA.

3 (3) Report required supportive housing program information to the State of
4 California HCD, CalHFA, and other identified funding source, as related to any permanent supportive
5 housing developments as a result of this Agreement.

6 (4) Upon request from the FHA, provide all necessary or relevant demographic
7 information regarding the specified target populations to be served by permanent supportive housing
8 developments as a result of this Agreement.

9 (5) Ensure there are an adequate number of eligible, certified tenant referrals
10 made to permanent supportive housing projects developed by the FHA under this Agreement. Such
11 referrals must meet the tenant eligibility requirements established for any given permanent supportive
12 housing development as mandated by the funding source target population definition and as determined
13 by Fresno County's Behavioral Health Director or designee, or by other funding sources, as applicable.

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

19 C. In collaboration, both COUNTY and FHA shall be responsible to:

20 (1) No less than quarterly, representatives from COUNTY, FHA and other
21 interested and invited participants will meet to discuss any potential new projects, review any previous
22 work accomplished and assess the working relationship between all parties. The COUNTY and FHA
23 shall mutually agree upon the location of the supportive housing projects proposed for supportive housing
24 program applications.

25 (2) In the event a supportive housing program application is completed by
26 FHA, that it be appropriately submitted to the applicable funding source and meets all legal requirements,
27 including the provisions of Welfare and Institutions Code Sections 5847 and 5848 regarding postings and
28 30-day public comment requirement (W&I Code 5848(b)). Additionally, if a supportive housing

1 program application is completed and submitted to a funding source, ensure all appropriate parties are
2 informed of the submittal, including the Fresno County Behavioral Health Board and Fresno County
3 Board of Supervisors.

4 (3) In the event a supportive housing program application is funded, County
5 and FHA shall work collaboratively to ensure all necessary documents, including any MOU and/or other
6 Agreements, are executed to establish the role of the FHA as the qualified developer/borrower/property
7 manager or any combination thereof, and to establish the role of the COUNTY as the mental health
8 supportive service provider, for any supportive housing project funded.

9 **3. TERM**

10 This MOU shall commence on the Effective Date, and shall terminate on the 30th day of
11 June 2022. This Agreement may be extended for two (2) additional consecutive twelve (12) month
12 periods; July 1, 2022 through June 30, 2023 and July 1, 2023 through June 30, 2024, upon the written
13 approval of both parties no later than sixty (60) days prior to the first day of the next twelve (12) month
14 extension period. The Department of Behavioral Health ("DBH") Director or his/her designee is
15 authorized to execute such written approval on behalf of COUNTY based upon FHA's satisfactory
16 performance.

17 **4. TERMINATION**

18 A. Breach of Contract

19 Either party may immediately suspend or terminate this Agreement in whole or
20 in part, where in the determination by one of the parties there is:

- 21 1. An illegal or improper use of funds;
- 22 2. A failure to comply with any term of this Agreement;
- 23 3. A substantially incorrect or incomplete report submitted to the
24 COUNTY; or
- 25 4. Improperly performed service.

26 B. Without Cause

27 This Agreement may be terminated by either of the parties as to their
28 involvement in this Agreement, upon the giving of a thirty (30) day advance written notice of an

intention to terminate from one party to the other.

5. COMPENSATION

The services performed in accordance with the terms and conditions as stated in this Agreement shall be performed without any monetary compensation by either party.

6. MODIFICATION

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

Notwithstanding the above, minor changes, as determined by COUNTY's Department of Behavioral Health Director or his or her designee may be made with the written approval of COUNTY's Department of Behavioral Health Director or designee and FHA. Minor changes may include, but are not limited to, changes that will not significantly alter the responsibilities identified in this Agreement, and changes to addresses to which notices are to be sent.

7. INDEPENDENT CONTRACTOR

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

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

Because of its status as an independent contractor, FHA shall have absolutely no right to employment rights and benefits available to COUNTY employees. FHA shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In

1 addition, FHA shall be solely responsible and hold COUNTY harmless from all matters relating to
2 payment of FHA's employees, including compliance with Social Security, withholding, and all other
3 regulations governing such matters. It is acknowledged that during the term of this Agreement, FHA
4 may be providing services to others unrelated to the COUNTY or to this Agreement.

5 **8. NON-ASSIGNMENT**

6 Neither party shall assign, transfer or subcontract this Agreement nor their rights or duties
7 under this Agreement without the prior written consent of the other party with the exception of an
8 affiliate or limited partnership within a tax credit transaction.

9 **9. NON-DISCRIMINATION**

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

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

15 FHA is required to disclose if any of the following conditions apply to them, their
16 owners, officers, corporate managers and partners:

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

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

25 B. Within a three-year period preceding this Agreement, they have had a public
26 transaction terminated for cause or default.

27 Disclosure of the above information will not automatically eliminate FHA from further
28 business consideration. The information will be considered as part of the determination of whether to

1 continue and/or renew the contract and any additional information or explanation that FHA elects to
2 submit with the disclosed information will be considered. If it is later determined that the FHA failed
3 to disclose required information, any contract awarded to FHA may be immediately voided and
4 terminated for material failure to comply with the terms and conditions of the Agreement.

5 **11. COMPLAINTS**

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

14 **12. NOTICES**

15 The persons have authority to give and receive notices under this Agreement and their
16 addresses include the following:

17 **COUNTY**

18 Director, Fresno County
19 Department of Behavioral Health
20 4441 E. Kings Canyon
Fresno, CA. 93702

FHA

Executive Director
Housing Authority of the County of Fresno
1331 Fulton Mall
Fresno, CA. 93721

21 Any and all notices between the COUNTY and the FHA provided for or permitted under this
22 Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to
23 one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage
24 prepaid, addressed to such party

25 **13. SEVERABILITY**

26 The provisions of this Agreement are severable. The invalidity or unenforceability of any
27 one provision in the Agreement shall not affect the other provisions.

28 **14. HOLD HARMLESS**

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

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

21 **15. INSURANCE**

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

26 A. Commercial General Liability

27 Commercial General Liability Insurance with limits of not less than Two Million Dollars
28 (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This

1 policy shall be issued on a per occurrence basis. COUNTY may require specific coverage including
2 completed operations, product liability, contractual liability, Explosion, Collapse, and Underground
3 (XCU), fire legal liability or any other liability insurance deemed necessary because of the nature of
4 the MOU.

5 B. Automobile Liability

6 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
7 (\$1,000,000) per accident for bodily injury and for property damage. Coverage should include owned
8 and non-owned vehicles used in connection with this MOU.
9

10 C. Professional Liability

11 The FHA does not anticipate to employ any licensed professional staff (*e.g.* Ph.D., R.N.,
12 L.C.S.W., L.M.F.T.) to provide services. But if FHA does employ any licensed professional, FHA will
13 provide Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000)
14 per occurrence, Three Million Dollars (\$3,000,000) annual aggregate.
15

16 D. Worker's Compensation

17 A policy of Worker's Compensation Insurance as may be required by the California Labor
18 Code.
19

20 Additional Requirements Relating to Insurance

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

27 FHA hereby waives its right to recover from COUNTY, its officers, agents, and
28 employees any amounts paid by the policy of worker's compensation insurance required by this

1 Agreement. FHA is solely responsible to obtain any endorsement to such policy that may be necessary
2 to accomplish such waiver of subrogation, but FHA's waiver of subrogation under this paragraph is
3 effective whether or not FHA obtains such an endorsement.

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

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

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

25 **16. CONFIDENTIALITY**

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

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

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

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

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

28 C. FHA, including its subcontractors, agents, and employees, shall not disclose any

1 such identifying information to any person or entity, except as otherwise specifically permitted by this
2 Agreement, authorized by law, or authorized by the client/patient.

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

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

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

17 FHA shall make any amendment(s) to PHI in a designated record set at the request of
18 COUNTY, and in the time and manner designated by COUNTY in accordance with 45 CFR Section
19 164.526.

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

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

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

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

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

I. Safeguards

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

FHA shall implement strong access controls and other security safeguards and

precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the following administrative and technical password controls for all systems used to process or store confidential, personal, or sensitive data:

1. Passwords must not be:

- a. Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
- b. A dictionary word; or
- c. Stored in clear text

2. Passwords must be:

- a. Eight (8) characters or more in length;
- b. Changed every ninety (90) days;
- c. Changed immediately if revealed or compromised; and
- d. Composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z);
- 2) Lowercase letters (a-z);
- 3) Arabic numerals (0 through 9); and
- 4) Non-alphanumeric characters (punctuation symbols).

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

1. Network-based firewall and/or personal firewall;
2. Continuously updated anti-virus software; and
3. Patch management process including installation of all operating

system/software vendor security patches.

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

1 (including, but not limited to, laptop and notebook computers).

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

6 J. Mitigation of Harmful Effects

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

10 K. FHA's Subcontractors

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

16 L. Employee Training and Discipline

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

21 M. Termination for Cause

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

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

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

1 3. If neither cure nor termination is feasible, the COUNTY Privacy Officer
2 or the FHA designee(s) shall report the violation to the Secretary of the U.S. Department of Health and
3 Human Services.

4 N. Judicial or Administrative Proceedings

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

11 O. Effect of Termination

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

20 P. Disclaimer

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

26 Q. Amendment

27 The parties acknowledge that Federal and State laws relating to electronic data
28 security and privacy are rapidly evolving and that amendment of these provisions may be required to

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

8 R. No Third-Party Beneficiaries

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

12 S. Interpretation

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

17 T. Regulatory References

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

20 U. Survival

21 The respective rights and obligations of FHA as stated in this Section shall
22 survive the termination or expiration of this Agreement.

23 V. No Waiver of Obligations

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

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18. DATA SECURITY

For the purpose of preventing the potential loss, misappropriation or inadvertent access, viewing, use or disclosure of COUNTY data including sensitive or personal client information; abuse of COUNTY resources; and/or disruption to COUNTY operations, individuals and/or agencies that enter into a contractual relationship with the COUNTY for the purpose of providing services under this Agreement must employ adequate data security measures to protect the confidential information provided to FHA by the COUNTY, including but not limited to the following:

A. FHA-Owned Mobile, Wireless, or Handheld Devices

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

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

B. FHA-Owned Computers or Computer Peripherals

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

C. COUNTY-Owned Computer Equipment

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

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

3 E. FHA shall be responsible to employ strict controls to ensure the integrity and
4 security of COUNTY's confidential information and to prevent unauthorized access, viewing, use or
5 disclosure of data maintained in computer files, program documentation, data processing systems, data
6 files and data processing equipment which stores or processes COUNTY data internally and
7 externally.

8 F. Confidential client information transmitted to one party by the other by means of
9 electronic transmissions must be encrypted according to Advanced Encryption Standards (AES) of
10 128 BIT or higher. Additionally, a password or pass phrase must be utilized.

11 G. FHA is responsible to immediately notify COUNTY of any violations, breaches
12 or potential breaches of security related to COUNTY's confidential information, data maintained in
13 computer files, program documentation, data processing systems, data files and data processing
14 equipment which stores or processes COUNTY data internally or externally.

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

20 **19. AUDITS AND INSPECTIONS**

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

26 The COUNTY shall at any time during business hours, and as often as the FHA may deem
27 necessary, make available to the FHA for examination all of its records and data with respect to the
28 matters covered by this Agreement. The COUNTY shall, upon request by the FHA, permit the FHA to

1 audit and inspect all such records and data necessary to ensure the COUNTY's compliance with the terms
2 of this Agreement.

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

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

7 Only applicable if the FHA is operating as a corporation (a for-profit or non-profit
8 corporation) or the FHA changes its status to operate as a corporation during this agreement.

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

16 **21. NON-EXCLUSIVE AGREEMENT**

17 No provisions of this Agreement shall preclude COUNTY from entering into other
18 agreements/MOU's with other parties for supportive housing related programs and services.

19 **22. GOVERNING LAWS**

20 The parties agree that for the purposes of venue, performance under this Agreement is to
21 be in Fresno County, California.

22 The rights and obligations of the parties and all interpretation and performance of this
23 Agreement shall be governed in all respects by the laws of the State of California.

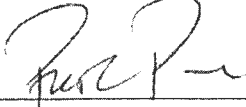
24 **24. ENTIRE AGREEMENT**

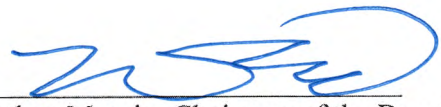
25 This Agreement and all exhibits constitutes the entire Agreement between the FHA and
26 COUNTY with respect to the subject matter hereof and supersedes all previous Agreements
27 negotiations, proposals, commitments, writings, advertisements, publications, and understandings of
28 any nature whatsoever unless expressly included in this Agreement.

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

FRESNO HOUSING AUTHORITY

COUNTY OF FRESNO

By: 

By: 
Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno


Print Name: Preston Prince

Date: January 29, 2019

Title: Executive Director

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

Date: 1-22-19

By: 

Date: January 29, 2019

By: _____

Print Name: _____

Title: _____

Secretary of Corporation, or
Any Assistant Secretary, or
Chief Financial Officer, or
Any Assistant Treasurer

Mailing Address:

Fresno Housing Authority
1331 Fulton Street
Fresno, CA. 93721
Phone No.: (559) 443-8400
Contact: Executive Director

Fund: 0001/10000
Organization: 56304710
Account: 7295