



Yolo County Housing

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BOARD OF COMMISSIONERS

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DATE: May 13, 2010

TO: YCH Board of Commissioners

FROM: Lisa A. Baker, Executive Director

SUBJECT: **Review and Approve Proposed Memorandum of Understanding Between Yolo County Housing, the Housing Authority of the County of Butte and the Consolidated Housing Authority of Sutter County for the Purposes of Energy Performance Contracting**

RECOMMENDED ACTIONS:

That the Board of Commissioners:

1. Approve the proposed Memorandum of Understanding between Yolo County Housing, the Housing Authority of the County of Butte and the Consolidated Housing Authority of Sutter County for the Purposes of Energy Performance Contracting; and
2. Authorize the Executive Director to execute the agreement.

BACKGROUND / DISCUSSION:

Energy Performance contracting is a vehicle that allows PHAs to use Operating Subsidy that would otherwise be recaptured due to reduced energy demand from energy efficient improvements to make payments on large scale projects designed to improve energy performance and reduce consumption. These are long term contracts for financed improvements where the Operating Subsidy that would be lost will, instead, be used to make the payments on financed improvements during that time frame. The energy contractor who designs the Energy Performance Contract (EPC) not only puts in the improvements and helps find financing for the project, but must, by regulation, also provide a financial guarantee that the project will earn sufficient revenue in Operating Subsidy in order to make those financial payments.

The YCH has investigated energy performance contracting and discussed the benefits of this program during its 2008 planning retreat and it is one of the items called for in the Board adopted Energy Plan.

The projects need to be large scale in order to attract Energy Services Contracting Officers (ESCOs). Because of this, staff from housing authorities in three (3) counties recommend that the three (3) counties create one project for purposes of Energy Performance Contracting in order to meet the ideal threshold for project size. Those counties are Butte

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County, Sutter County and Yolo County. All three agencies are already working in energy improvements and have a history and track record with regard to energy technologies.

FISCAL IMPACT:

An Energy Performance Contract would provide its own revenue for the project; would not impact other restricted grants or assets; and would allow the YCH to do a larger project than it can with its annual Capital Fund allotment.

CONCLUSION:

The Executive Directors and their facilities staff members have met and recommend this approach in order to maximize available funding and to continue to provide a quality living environment for residents.

Attachment: Proposed Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
FOR PLANNING A MULTI-AUTHORITY JOINT PROCUREMENT
OF AN ENERGY SERVICES COMPANY (ESCO)**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made as of this ____ day of _____, 2010, by and between the **YOLO COUNTY HOUSING** (formally known as the Housing Authority of the County of Yolo, hereinafter "Yolo"), the **HOUSING AUTHORITY OF THE COUNTY OF BUTTE** (hereinafter "Butte") and the **CONSOLIDATED AREA HOUSING AUTHORITY OF SUTTER COUNTY** (hereinafter "Sutter"). Yolo, Butte and Sutter are herein after referred individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, the Parties wish to explore the feasibility and viability of reducing their respective agency's water and energy consumption and associated costs and make water and energy-related capital improvements under an Energy Performance Contract (hereinafter "EPC") as regulated by the U.S. Department of Housing and Urban Development (hereinafter "HUD") under 24 CFR 990 and federal energy reduction and renewable energy goals described in 24 CFR 965; and

WHEREAS, the Parties have determined that a joint procurement for such services to be provided by an Energy Services Company (hereinafter "ESCO") is more advantageous to the Parties; and

WHEREAS, upon determination that the overall efficiency and expediency in developing such an EPC project would be improved by both a joint procurement process and subsequent direction provided to the selected ESCo by a collaborative decision-making body representing the Parties; the Parties desire to enter into this MOU.

NOW, THEREFORE, in order to more fully realize the above identified goals and benefits by utilizing a collaborative approach, the Parties agree as follows:

1. The Project Management Committee (hereinafter "Committee") shall be comprised of the Executive Directors of Yolo, Butte and Sutter (hereinafter individually referred to as "Member" or collectively as "Members").

a. The Committee may invite other housing authority personnel, agents, or consultants to provide information to the Committee, but only Committee Members have the right to vote.

b. Each Committee Member shall have one vote.

c. The Committee will strive to reach consensus on all decisions, but if consensus cannot be reached, the majority vote shall control.

2. The objectives of the Committee are:

a. Develop and publish a single HUD-compliant Request for Proposals (hereinafter "RFP") for the provision of Energy Performance Contracting Services to Yolo, Butte and Sutter;

b. Review, evaluate and score the written responses and oral presentations of the respondent ESCOs to the Parties' RFP for Energy Performance Contracting Services;

c. Upon approval from each of the Parties' respective Board of Commissioners, select the ESCO that provides the most advantageous solutions to the Parties' goals and objectives as outlined in the RFP;

d. Coordinate internal scheduling, personnel and other resources among the Parties' respective agencies to allow efficient and timely execution of work required of the ESCO to conduct the Investment Grade Energy Audits (hereinafter "IGEA's") and other project development tasks;

e. Encourage the Parties' respective Boards of Commissioners to act in concert with respect to HUD-required board approval(s) to ensure efficient and timely project progression; and

f. Undertake other EPC project-related activities as deemed necessary by the Parties.

3. All activities to be carried out hereunder by the Parties shall be in full compliance with federal law, HUD rules and regulations, and any other applicable state or local laws, rules and regulations now or hereafter in existence.

4. The Parties agree, as necessary, to negotiate in good faith a further Memorandum of Understanding regarding each Party's duties and responsibilities concerning the management, financing, and operation of the ESCO selected pursuant to this MOU. The Parties agree to complete negotiations on any further Memorandum of Understanding prior to the award of the EPC.

5. All Parties will retain accounting records and other documents pertaining to all costs for three (3) years from the termination of this MOU. These records and documents must be made available for inspection and audit by any representative of any Party to this Agreement upon ten (10) days advance written notice and during normal business hours.

6. Any Party may withdraw from this MOU at any time by providing thirty (30) days advance written notice to the other Parties and by reimbursing the other Parties for any out-of-pocket costs, if any, incurred due to the withdrawal.

7. All notices shall be deemed to have been given when made in writing and delivered or mailed to the Parties at their respective addresses as follows:

Yolo:
Attn: Executive Director
Yolo County Housing
147 W. Main Street
Woodland, CA 95695
Phone: (530) 662-5428
Fax: (530) 662-5429

Butte:
Attn: _____

Phone: _____
Fax: _____

Sutter:
Attn: _____

Phone: _____
Fax: _____

Any Party may change the address or facsimile number to which such communications are to be given by providing the other Parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

8. Each of the signatories to this MOU represents that s/he is authorized to sign the MOU on behalf of such Party, that all approvals, resolutions and consents which must be obtained to bind such Party have been obtained, and that no further approvals, acts or consents are required to bind such Party to this MOU.

9. The term of this MOU shall commence on the effective date of this MOU and continue until June 30, 2011, unless otherwise extended or terminated earlier by mutual agreement. This MOU shall not be effective until approved by each Party's Board of Commissioners.

10. Any Party may propose changes to this MOU. Except for amendments that are specifically authorized herein to be approved by the Committee, this MOU may only be amended by a written amendment approved by each Party's Board of Commissioners.

11. This MOU shall be interpreted and constructed according to and enforced under the laws of the State of California. The Parties agree that the Superior Court of the County of Yolo, California shall have exclusive jurisdiction and venue over any legal action arising under this MOU.

12. This MOU constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreement, whether written or oral. In the event of a dispute between the Parties as to the language of this MOU or the construction or meaning of any term hereof, this MOU shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this MOU.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their duly authorized officers, all as of the day and year first above written.

YOLO COUNTY HOUSING

**HOUSING AUTHORITY OF THE
COUNTY OF BUTTE**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**CONSOLIDATED AREA HOUSING AUTHORITY OF
SUTTER COUNTY**

By: _____

Name: _____

Title: _____