

Yolo County Housing

Lisa A. Baker, Executive Director

147 W. Main Street WOODLAND, CA 95695 Woodland: (530) 662-5428 Sacramento: (916) 444-8982 TTY: (800) 545-1833, ext. 626 Duane Chamberlain Marlene C. Garnes Michael H. McGowan Jim Provenza Matt Rexroad. Helen M. Thomson Bernita Toney

BOARD OF COMMISSIONERS

DATE:

May 1, 2009

TO:

YCH Board of Commissioners

FROM:

Lisa Baker, Executive Director

PREPARED BY:

Fred Ichtertz, Facilities/Maintenance Manager

SUBJECT:

Review Draft Agreement and Approve Resolution Authorizing the Executive Director to enter into final agreement, subject to review and approval by Agency Legal Counsel, with the Department of Housing and Community Development (HCD) for an improvement grant of \$1,000,000 for property improvements at the Davis Migrant Center.

RECOMMENDED ACTIONS:

That the Board of Commissioners;

- 1. Review the draft agreement; and
- 2. Approve a Resolution to enter into an agreement with State HCD, Office of Migrant Services (OMS), for a \$1,000,000 grant for property improvements at the Davis Migrant Center; and
- 3. Authorize the Executive Director to finalize and execute the agreement, subject to review and approval of said agreement by Agency Legal Counsel.

BACKGROUND / DISCUSSION

The California State Department of Housing and Community Development Office of Migrant Services (OMS) has recently secured a grant from the United States Department of Agriculture (USDA) for improvements to the Davis Migrant Center in the amount of \$1,000,000. These improvements include a new domestic well system with an emergency back up generator, security screen doors at residential units, playground and basketball court improvements and various landscaping improvements, including installation of a sprinkler irrigation system.

Since Yolo County Housing (YCH) manages and maintains the Davis Migrant Center for OMS, OMS and YCH must enter into an agreement in order to be able to begin the process of implementing the planned improvements and drawdown of funds from OMS and USDA.

FISCAL IMPACT

Not approving the resolution will result in the loss of the \$1,000,000 grant opportunity. Failure to execute a final agreement would also result in the loss of the \$1,000,000 grant opportunity.

YCH Board of Commissioners May 7, 2009 Agreement, \$1,000,000 Davis Page 2

CONCLUSION

Staff recommends that the Board approve by resolution, the authorization of Executive Director to finalize and execute final Agreement Number 08-OMS-880 (RD) with California State Department of Housing and Community Development Office of Migrant Services for improvements at the Davis Migrant Center.

YOLO COUNTY HOUSING

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(Approval and Authorization of Executive Director to execute agreement number 08-OMS-880 (RD) with the California State Department of Housing and Community Development for improvements at the Davis Migrant Center)

WHEREAS, the California State Department of Housing and Community Development (HCD) has secured a rehabilitation project grant from the United States Department of Agriculture–Rural Development (USDA-RD) in the amount of \$1,000,000.00; and

WHEREAS, pursuant to the annual operating and maintenance agreement between HCD and the Housing Authority of the County of Yolo (YCH), YCH is responsible for the operation and maintenance of the migratory agricultural housing center located in Davis, County of Yolo (Davis Migrant Center); and

WHEREAS, HCD has received funding from the U.S. Department of Agriculture (USDA) for domestic water well system improvements, security screen doors, playground and basketball court improvements and landscaping improvements at the Davis Migrant Center.

NOW, THEREFORE, BE IT RESOLVED, FOUND AND DETERMINED that the Board of Commissioners of the Housing Authority of the County of Yolo hereby approves and authorizes the Executive Director to execute said rehabilitation agreement 08-OMS-880 (RD) for the Davis Migrant Center with the California State Housing and Community Development.

EFFECTIVE DATES: This Resolution shall take effect from and after the date of its adoption.

PASSED AND ADOPTED, by the Board of Commissioners of the Housing Authority of the County of Yolo, County of Yolo, State of California, this 7th day of May 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

	Helen M. Thomson, Chair Board of Commissioners of the
	Housing Authority of the County of Yolo
	Approved as to Form:
	Sonia Cortés, Deputy County Counsel
Attest:	
Ana Morales, Clerk Board of Commissioners of the Housing Authority of the County	of Yolo
Ву	
Deputy	

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STA	STANDARD AGREEMENT		
STD	STD 213 (Rev 06/03)	AG	REEMENT NUMBER
		08	-OMS-880 (RD)
		RE	GISTRATION NUMBER
		N/	'A
1.	1. This Agreement is entered into between the State Agency and the Co	ntracto	or named below:
	STATE AGENCY'S NAME		
	DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT		
	CONTRACTOR'S NAME		
	Housing Authority, County of Yolo		
2.	·=·		
	Agreement is: Approval through December	31, 2	012
3.	3. The maximum amount		
	of this Agreement is: \$ 1,000,000.00		
4.	 The parties agree to comply with the terms and conditions of the follo part of the Agreement. 	wing e	exhibits which are by this reference made a
	Exhibit A – Authority, Purpose and Scope of Work 2		page(s)
	Exhibit B – Budget Detail and Payment Provisions 2		page(s)
	Exhibit C – HCD General Terms and Conditions		page(s)
	Exhibit D – State of California General Terms and Conditions 6		page(s)
	Exhibit E – Special Terms and Conditions	/A	page(s)
	Exhibit F – Additional Provisions	/A	page(s)
	TOTAL NUMBER OF BACKS ATTACHED		10 name
	TOTAL NUMBER OF PAGES ATTACHED:		19 pages

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	California Department of General Services Use Only	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation	, partnership, etc.)	
Housing Authority, County of Yolo		
BY (Authorized Signature)	DATE SIGNED(Do not type)	

PRINTED NAME AND TITLE OF PERSON SIGNING		
Lisa Baker, Executive Director		
ADDRESS		
147 West Main Street, Woodland, CA 95695		
STATE OF CALIFORNIA		
AGENCY NAME		
Department of Housing and Community Developmen	nt	
BY (Authorized Signature)	DATE SIGNED(Do not type)	
K		
PRINTED NAME AND TITLE OF PERSON SIGNING		
Stacy Q. Hernandez, Contracts Manager, Budget an	d Contracts Branch	☐ Exempt per: SCM 4.04.3 (DGS Memo Dated 6/12/81)
ADDRESS		
1800 Third Street, Room 350, Sacramento, CA 95817	1	

EXHIBIT A

1. Authority and Purpose

Pursuant to chapter 4 of part 11 of division 31 of the Health and Safety Code, section 53533(a)(4)(A), funds have been allocated for projects that serve migratory agricultural workers and the Department of Housing and Community Development (HCD) is an eligible recipient after July 1, 2004, for the purposes of reconstructing migrant centers operated by the Office of Migrant Services (OMS) that would otherwise be scheduled for closure due to health and safety considerations or that are in need of significant repairs to ensure the health and safety of the residents.

2. Scope of Work

- A. Pursuant to the annual operating and maintenance agreement between the Department of Housing and Community Development (HCD) and the Contractor, the Contractor is responsible for the operation and maintenance of migratory agricultural housing center(s), hereinafter referred to as Housing Center(s), established and located within Yolo County under the authority of Chapter 8.5 (commencing with Section 50710) of Part 2, Division 31, of the Health and Safety Code.
- B. Whereas, HCD has received funding for irrigation, evaporative coolers and to seal coat the road and parking, as necessary, at the Davis Migrant Center in Yolo County, the Contractor shall perform these activities to the extent permitted in Exhibit B, Budget Detail and Payment Provisions, which is hereby incorporated by reference and made a part of this Agreement, and all requirements of the State law governing public work contracts.

3. <u>Term of Agreement and Deadlines</u>

- A. The term of this Agreement is the date of approval by HCD through December 31, 2012. The State shall not be liable for any costs incurred by the Contractor between the made and approved date of the approval by the HCD, if HCD does not approve this Agreement. The Contractor shall complete the activities as set forth in the attached Exhibit B prior to November 30, 2012.
- B. The total amount of this Agreement shall not exceed \$1,000,000.00. HCD shall reimburse the Contractor monthly in arrears for the Contractor's actual and necessary expenses in accordance with the attached Budget Detail and Payment Provisions, Exhibit B which is hereby incorporated by reference and made a part of this Agreement, and which was incurred in a manner consistent with all applicable laws and ordinances. In accordance with the foregoing, HCD and the Contractor agree to undertake the activities provided for in the Agreement.

4. Construction/Rehabilitation Specifications

A. Rehabilitation

\$970,000.00

- Floor padding for playground
- Security Screen Doors
- Restore Entrance Island Landscaping Painting/fence repair
- Install sprinkler irrigation system
- Construction of basketball court
- New well/generator system/plumbing
- ADA

B. Administration

\$ 30,000.00

5. State Contract Coordinator

Mr. Arturo Rodriguez
Office of Migrant Services
Department of Housing and Community Development
Post Office Box 952054
Sacramento, CA 94252-1054
Work - (916) 327-3622 Cell (916) 296-0952

6. Contract Contact Coordinator

Lisa Baker, Executive Director Housing Authority, County of Yolo 147 West Main Street Woodland, CA 95695 (530) 669-2219

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Loan Amount and Disbursement Schedule

- A. Upon receipt of a certified resolution authorizing this Agreement, the State agrees to disburse to the Contractor or its authorized agent funds not to exceed the total amount stated on Page 1 Section 3 of this Agreement (Std. 213).
- B. The State further agrees to disburse said funds only for the approved purposes and amounts stated in Section 4 of Exhibit A. If requested by the Contractor, the State may by written notice authorize changes in the approved purposes and amounts.
- C. On or after the effective date of this Agreement HCD may, upon the Contractor's written request, make a one-time advance of funds in an amount not to exceed 20% of the total amount stated on Page 1 Section 3 of this Agreement (Std. 213). The amount of any funds so advanced shall be deducted from the final invoices submitted by the Contractor.
- D. The State shall not be liable for any costs incurred by the Contractor prior to the effective date of this Agreement unless specifically authorized by HCD in writing after the effective date of this agreement.
- E. If the Contractor is in violation of any provision of this Agreement or the operating and maintenance agreement referenced in Exhibit A, Item 1, the State may, at its sole discretion, withhold payment of funds under this Agreement until such violations are corrected.

2. Request for Funds

- A. HCD shall reimburse the Contractor monthly in arrears for the Contractor's actual and necessary expenses in accordance with the Construction/ Rehabilitation Budget set forth below and which were incurred in a manner consistent with all applicable laws and ordinances.
- B. For each disbursement the Contractor shall submit, in a form determined by the State, a written request that states the purposes for which the disbursement is requested and shall attach to said request copies of the invoices, bids, contracts, schedules, deeds, or the like that document the need for the disbursement.

2. Request for Funds (continued)

C. All requests for disbursement and other fiscal documents shall be dated and executed by the Contractor's executive officer or fiscal officer after its verification and certification of the information therein.

3. <u>Disbursements</u>

The State shall disburse the requested funds only for work performed for and documented by the Contractor or for equivalent services that have been rendered to and documented by the Contractor or for the actions that are to be performed and documented by the Contractor pursuant to statute, regulation, contract, or schedule.

4. <u>Line Item Changes</u>

The Department may approve a request from the Contractor to reallocate funds between the authorized purposes and itemized amounts stated in Section 5 of Exhibit B.

5. Construction/Rehabilitation Budget

Budget/Specifications

Code		Unit Cost	Total
Rehabilitation	Floor padding for playground		\$ 970,000.00
	Security Screen Doors		
	Restore entrance island		
	landscaping		
	painting/fence repair		
	Install sprinkler system		
	Construct Basketball		
	Court		
	New well/generator		
	system/plumbing		
	ADA		
Administration			\$ 30,000.00
Total			\$1,000,000.00

EXHIBIT C

HCD GENERAL TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective <u>upon approval by the State</u> which is the date stamped by the Department of Housing and Community Development (HCD) in the lower right hand corner of page one of the Agreement. The Contractor agrees that Work shall not commence prior to the effective Date of the Agreement. The Work shall be completed by the expiration date specified in Exhibit A, Section 3, and the Contractor shall provide services for the full term of the Agreement.

2. Sufficiency of Funds and Termination

- A. The State may terminate this Agreement at any time for cause by giving at least ten (10) days notice in writing to the Contractor. The cause shall consist of: violations of any terms and/or special conditions of this Agreement; unsatisfactory performance of the work; or violation of the regulations contained in the California Code of Regulations commencing with Section 7950. Upon termination of this Agreement, unless otherwise approved in writing by the State, any unexpended funds received by the Contractor shall be returned to the State within thirty (30) days of the Notice of Termination.
- B. The State shall be liable only for approved obligations and expenditures to the date of termination. The Contractor shall have thirty (30) days to submit a final Request for Disbursement after the date of termination of this Agreement.
- C. The State retains the right to either terminate this Agreement under the ten-day cancellation clause or to amend the Agreement to reflect withdrawal of the State's expenditure authority or any reduction of funds.

3. Litigation

A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the State, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.

3. <u>Litigation</u> (continued)

B. The Contractor shall notify the State immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the State and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the State.

4. Subcontracting

The Contractor may subcontract the work. In the event the Contractor purchases materials or services or subcontracts performance of this Agreement, the Contractor shall adopt the following procedures which shall be implemented in a manner consistent with State law.

- A. The Contractor shall invite bids for subcontracts, services and/or materials from as many prospective bidders as practical.
- B. The Contractor shall award the rehabilitation or construction contract and/or service or purchase agreement to the lowest responsible bidder or reject all bids; provided, however, that no awards shall be made without prior written approval of the State.
- C. The Contractor shall award no subcontract, service contract and/or purchase agreement if the lowest responsible bid exceeds that amount allocated to the corresponding budget item in Exhibit B (unless modified in writing as permitted under this Agreement).
- D. The Contractor shall maintain and make available to the State detailed records and accounts of all subcontracts, purchases of materials and/or services made under the above procedure.
- E. The Contractor shall submit any subcontracts over \$5,000 which are proposed to be entered into to the State for its prior written approval before entering into same if those subcontracts are wholly or partially financed funds provided under this Agreement. Every such subcontract shall include all the relevant terms and conditions of this Agreement and its attachments in addition to other relevant terms and conditions.

5. Records

The Contractor shall maintain such records and accounts, including property, personnel and financial records, as are deemed necessary by the State to insure a proper accounting of all Agreement funds, and shall retain the same for at least the three (3) years after final payment, unless a longer period of records retention is stipulated. The State and the Bureau of State Audits shall have access to and the right to examine and audit all reports, records, books, papers and other documents related to the Contractor's performance under this Agreement.

The Contractor agrees to establish and maintain fiscal controls and accounting procedures in accordance with generally accepted accounting principles and any guidelines prescribed by the State. Contractor shall ensure that Agreement funds are properly disbursed, are adequately controlled, and are accounted for separately from all other funds controlled by the Contractor. The accounting procedures utilized by the Contractor must provide for the accurate and timely recordation of receipt of funds, expenditures, and unexpended balances. The Contractor shall adequately document each transaction to permit the determination, through an audit if requested by the State, of the accuracy of the records and the allowability of expenditures of the Agreement funds. If the allowability of an expenditure cannot be determined because records or documentation are inadequate, the questionable expenditure shall be disallowed and the Contractor shall reimburse the State for the amount of any disallowed expenditure. Determination by the State of the allowability of any expenditure shall be final except in instances of fraud, mistake, or arbitrariness. If any Agreement funds are placed in an interest-bearing account, all interest earned must be returned to the State.

6. Title to Purchased Property

If property costing less than \$150.00 per item is properly acquired with Agreement funds, and is expected at the time of acquisition to be used indefinitely for the purpose for which it was purchased, title to such property shall vest in the Contractor at the time of acquisition. If property acquired with Agreement funds has a cost of \$150.00 or more per item, or is not expected at the time of acquisition to be used indefinitely for the purpose for which it was acquired, title to such property shall vest in the State. If property purchased under this Agreement is diverted to uses inconsistent with this Agreement, the Contractor shall be liable to the State for the replacement value of such property. If property with a unit price of \$5,000 or more is acquired or disposed of, the Contractor shall notify the State within 30 days of that acquisition or disposal so that the State may properly account for that acquisition or disposal.

7. Availability of Funds

The obligations under this Agreement are hereby made expressly contingent upon the availability of funds for the purpose of this Agreement. It is understood that this Agreement may have been written prior to the beginning of the fiscal year in order to expedite contract processing; however, should funds not be appropriated by the Legislature for the current fiscal year, the State will exercise its option to immediately cancel this contract.

8. Compliance with Operating and Maintenance Contract

All housing units and related facilities purchased, constructed, equipped, maintained, or repaired pursuant to this Agreement shall be operated, maintained, and protected in accordance with and shall be subject to the provisions of the current operating and maintenance contract.

9. Termination without Cause

The State may, at its option, and except as provided in Paragraph 11, terminate this Agreement at any time upon giving 30 days advance notice in writing to the Contractor in the manner provided by law. In such event, Contractor agrees to use all reasonable efforts to mitigate expenses and obligations hereunder. In such event, the State shall pay the Contractor for all satisfactory services rendered prior to such notice of termination; for all expenses incurred by the Contractor prior to said termination which are not included in charges for services rendered prior to termination and which could not by reasonable efforts of the Contractor have been avoided, but not in excess of maximum payable amount pursuant to this Agreement. Upon termination, the Contractor agrees to account for all Agreement funds within 30 days of the termination.

10. Termination for Cause

In the event of any breach of this Agreement, the State may, without any prejudice to any of its other legal remedies, terminate this Agreement upon five days written notice to the Contractor. Upon receipt of the notice, the Contractor shall cease all work under this Agreement or take such other actions as the notice requires. Upon termination, the Contractor agrees to account for all Agreement funds within 30 days of the termination. In the event of termination, the State shall pay the Contractor only the reasonable value of the services rendered as the same may be agreed upon by the parties or determined by a court of competent jurisdiction.

11. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of HCD to enforce at any time the provisions of this Agreement, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provision nor to affect the validity of this Agreement or the right of HCD to enforce said provisions.

12. Travel

Any travel undertaken pursuant to this Agreement shall not be billed to the State in excess of those amounts permitted by the Department of Personnel Administration Rules and Regulations.

13. Lawful Prosecution of the Work

The Contractor shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, and give all notices necessary and incident to the lawful prosecution of the work. The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and comply with all prevailing Federal, State and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in anyway affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referenced to, then the Contractor shall immediately notify the State in writing.

14. Notice of Commencement of Action

The State, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the State or its officers or employees for which the Contractor must provide indemnification under this Agreement. To the extent permitted by law, the State shall authorize the Contractor or its insurer to defend such claims, suits, or actions, and shall provide it or its insurer, at the Contractor's expense, information and assistance both necessary and available for such defense.

14. Notice of Commencement of Action (continued)

The failure of the State to give such notice, information, authorization or assistance, shall not relieve the Contractor of its indemnification obligation. The Contractor shall immediately notify the State of any claim or action against it which affects or may affect this Agreement, the terms and conditions hereunder, or the State, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interests of the State.

15. Default

Neither the State nor the Contractor shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement by causes beyond its control, including without being limited to: acts of God or the public enemy; interference, rulings or decisions by municipal, Federal, State, or other governmental agencies, boards, or commissions; any laws and/or regulations of such municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, shall immediately give the other parties written notice thereof and shall resume other operations under this Agreement.

16. Validity

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement and the remainder of this Agreement shall remain in full force and effect unless, at the State's sole discretion, the invalid portion of the agreement has a material effect on the interests of the State, and the State at its sole discretion determines that the entire agreement is therefore invalid.

17. Disputes

Except as otherwise provided in this Agreement, any dispute arising under or relating to the performance of this Agreement which is not disposed of by agreement shall be decided by the State's Contract Manager, who shall reduce decisions to writing in regard to the dispute

17. Disputes (continued)

and shall transmit a copy thereof to the Contractor. The decision of the Contract Manager shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the Contractor transmits to the State a written appeal. Pending the final decision of the Director of the Department of Housing and Community Development, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with the written decision of the Contract Manager which is the subject of the Contractor's appeal. Notwithstanding any other provisions of this Agreement, after recourse to the procedure set forth in the Paragraph above, any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration at the election of either party in accordance with California Public Contract Code Section 10240, et seq., and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

18. Site Visits

The State may routinely monitor the progress of expenditures and activities under this Agreement, including site visits after reasonable notice to the Contractor. At these site visits, the State shall have the right to inspect program or fiscal records, and to inspect project activities or expenditures. The Contractor shall ensure that all work or activities found by the State to be in breach of this Agreement will be corrected within the period of time specified by the State. The Contractor shall reimburse the State for its costs of monitoring and inspecting if funds are provided in the Budget for this purpose.

19. Prevailing Wages

Where funds provided through this Agreement are used for construction work, or in support of construction work, the Contractor shall ensure that the requirements of Chapter 1 (commencing with section 1720) of Part 7 of the Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction

19. <u>Prevailing Wages</u> (continued)

contract will be between the Contractor and a licensed building contractor, the Contractor shall serve as the "awarding body" as that term is defined in the Labor Code. Where the Contractor will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party will serve as the "awarding body." The construction contract and any amendments thereto shall be subject to the prior written approval of the State. Prior to any disbursement of funds, including but not limited to release of any final retention payment, the State may require a certification from the awarding body that prevailing wages have been or will be paid.

20. <u>Indemnity and Insurance</u>

The Contractor shall comply with the following:

- A. The Contractor shall indemnify and save harmless the State of California and all officers and employees thereof connected with the work or program assisted by this Agreement, from all claims, suits, or actions of every name, kind and description, brought forth, or on account of, physical or other injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from the performance of this Agreement, except or otherwise provided by statute. The duty of the Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.
- B. The Contractor waives any and all rights to any types of express or implied indemnity against the State, its officers and employees.
- C. It is the intent of the parties hereto that the Contractor will indemnify and hold harmless the State, its officers and employees from any and all claims, suits, or actions as set forth above regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the State, the Contractor, or the subcontractor or employee of any of these.
- D. If the activity funded by this Agreement does not include construction/rehabilitation, the Contractor hereby warrants that it and its subcontractor(s) shall carry, and maintain in force, general liability, property damage (including fire), workers compensation and other necessary insurance in amounts adequate to protect

20. <u>Indemnity and Insurance</u> (continued)

the interests of the Contractor, its subcontractors, and the interests, by virtue of the assistance provided by this Agreement, of the State of California and its officers and employees.

- E. If the activity funded by this Agreement includes construction or rehabilitation work, during the term of this Agreement the Contractor shall obtain, carry, and maintain in force -- or cause to be obtained, carried, or maintained in force -- comprehensive general liability insurance in the amount of not less than one hundred thousand dollars (\$100,000) for the injury to or death of one person, five hundred thousand dollars (\$500,000) for injury to or death of more than one person in one accident, and adequate property damage insurance.
- F. The Contractor will ensure that the State of California and its officers and employees are named as additional named insured on the general liability insurance policy required by subdivisions (d) or (e) for purposes of any litigation arising at any time during or after the term of this Agreement with respect to the performance of this Agreement or any act or omission thereunder. That policy also shall provide for notice to this Department in the event of any lapse of coverage and in the event of any claim thereunder. Upon request of the State, the Contractor shall submit documentation of such insurance to the State.
- G. Upon demonstration of cause satisfactory to HCD, the requirements of subdivisions (d), (e) and (f), may be satisfied by the Contractor providing evidence of an alternative to conventional insurance sufficient to provide equivalent protection.

EXHIBIT D

State of California <u>General Terms and Conditions</u>

1. Approval

This Agreement is of no force and effect until signed by both parties.

2. Amendment

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. Assignment

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. Indemnification

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

5. Disputes

Contractor shall continue with the responsibilities under this Agreement during any dispute.

6. <u>Termination for Cause</u>

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided.

7. Independent Contractor

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

8. Non-Discrimination Clause

- During the performance of this Agreement, Contractor and its subcontractors Α. shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- B. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

9. Timeliness

Time is of the essence in this Agreement.

10. Governing Law

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

11. Child Support Compliance Act

If this Agreement is in excess of \$100,000, by executing this Agreement, Contractor acknowledges and agrees to the following:

A. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

11. Child Support Compliance Act (continued)

B. Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

12. Severability

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

13. <u>Drug-Free Workplace Requirements</u>

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and (4) penalties that may be imposed upon employees for drug abuse violations.
- C. Every employee who works on the proposed contract will: (1) receive a copy of the Contractor's drug-free workplace policy statement; and (2) agree to abide by the terms of the Contractor's statement as a condition of employment under this agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code section 8350 et seq.)

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California:

14. Conflict of Interest

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

- A. Current State Employees (Public Contracts Code section 10410):
 - 1. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - 2. No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.
- B. Former State Employees (Public Contracts Code section 10411):
 - 1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - 2. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
- C. If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Public Contracts Code section 10420).

D. Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contracts Code section 10430 (e))

15. Labor Code/Workers' Compensation

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code section 3700)

16. Americans with Disabilities Act

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

17. Contractor Name Change

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the State will process the amendment.

18. Corporate Qualifications to Do Business in California

- A. If Contractor is a corporation, the State may verify that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.
- B. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the State not be subject to the franchise tax.
- C. Both domestic and foreign corporations (those incorporated outside California) must be in good standing in order to be qualified to do business in California. If Contractor is a corporation, the State will determine whether Contractor is in good standing by contacting the Office of the Secretary of State.

19. Resolution

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

20. Air or Water Pollution Violation

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of the provisions of federal law relating to air or water pollution.

21. Payee Data Record Form Std. 204

This form must be completed by all contractors that are not another state agency or other government entity.

22. National Labor Relations Board Certification

If Contractor is receiving federal funds under this Agreement, Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Not applicable to public entities.)

23. Domestic Partners

For contracts executed or amended after July 1, 2004, the contractor may elect to offer domestic partner benefits to the contractor's employees in accordance with Public Contract Code section 10295.3. However, the contractor cannot require an employee to cover the costs of providing any benefits which have otherwise been provided to all employees regardless of marital or domestic partner status.