

**AGREEMENT BETWEEN CITY OF FRESNO
AND
FRESNO EDISON APARTMENTS II, LP**
(Regarding Fresno Edison Apartments II, LP, funds for police services)

THIS AGREEMENT is entered into effective the 1st day of July, 2019, by and between the Fresno Edison Apartments II, a California limited partnership, hereinafter called "Fresno Edison Apartments II RAD" or "Fresno Edison Apartments II, LP," and the City of Fresno, California, a municipal corporation, hereinafter called the "City."

RECITALS

WHEREAS, the City provides local law enforcement services within the jurisdiction of the Fresno Edison Apartments II; and

WHEREAS, Fresno Edison Apartments II provides housing services and activities for residents of City; and

WHEREAS, Fresno Edison Apartments II is funding the services provided for in this Agreement through RAD budgeted funds, referred to hereafter as "RAD budgets" (using Operations funds for police services), which program and award documents are incorporated herein by this reference; and

WHEREAS, Fresno Edison Apartments II warrants that RAD budgets make available funding to reimburse local law enforcement for additional security and protection services provided in pursuit of the housing programs supported by Fresno Edison Apartments II; and

WHEREAS, On January 1, 1995, California Penal Code Section 11105.03 (Statute) became effective, allowing local law enforcement agencies to obtain State criminal history information through the California Law Enforcement Teletype System (CLETS) at the request of the local housing authorities for the purpose of screening prospective residents and prospective and current Fresno Edison Apartments II staff; and

WHEREAS, Penal Code Section 11105.03 specifies that a local agency may run criminal history checks through CLETS and release to the Fresno Edison Apartments II a record of convictions for certain specified violent felonies that have occurred within the past ten years; and information on any offenses committed by any person under 18 years of age are not reportable under the Statute; and

WHEREAS, Department of Justice guidelines require the development of a Memorandum of Understanding between Fresno Edison Apartments II and the local law enforcement agency outlining each agency's responsibilities in order to allow the release of criminal history information under the Statute, and the provisions contained in Section 2 of this Agreement are intended to serve that purpose; and

WHEREAS, the parties desire to enter into this Agreement, which provides terms and conditions where under the Fresno Edison Apartments II shall utilize the RAD budgets funds to reimburse City for additional law enforcement security and protective services provided by City under the RAD budgets and related activities; and

WHEREAS, performance of the services by City will be of benefit to City and in the public interest.

AGREEMENT

NOW, THEREAFTER, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, it is mutually agreed as follows:

1. Scope of Services.

City agrees to provide the following law enforcement services in accordance with and pursuant to the LP budgets and this Agreement, subject to all applicable Constitutional and local law requirements:

- (a) Law enforcement services will be provided by one Sworn Police Officer at the following complex located in southwest Fresno:

- 1) Fresno Edison Apartments II complex (consisting of Legacy Commons)

Hereafter called the "Target Area."

Based on patrol hours, a prorated portion consisting of \$15,425.50 which comprises 5% of the total contract will be billed to the Fresno Edison Apartments II, LP (the remainder will be billed to Fresno Housing Authority, Southeast RAD, Viking Village RAD, and Fresno Edison Apartments, LP, under separate agreements).

- (b) LP budgeted law enforcement services will be provided through full-time assignment of one sworn officer to each target area, for a total of two Sworn Police Officers (for all agreements), for the funded period not to exceed twelve months commencing July 1, 2019, and ending June 30, 2020. On an as needed basis, RAD budgets services may be diverted to Fresno Edison Apartments II complexes within the incorporated limits of the City of Fresno and outside of the "Target Areas".
- (c) Specific duties for law enforcement services to be performed by each Sworn Police Officer under this Agreement for the respective designated Target Areas in paragraph (a) above include the following:
- (i) Enforcing laws in accordance with Fresno Police Department policies;
 - (ii) Submitting weekly crime reports to the Housing Management District Manager;
 - (iii) Providing supplemental crime report data required for grant application, funding opportunities and initiative upon a timely request by the District Manager;
 - (iv) Referring resident victims to support services;
 - (v) Subject to Fresno Police Department Scheduling, each officer will work a platoon schedule consisting of a work week of five (5) ten-

hour days followed by a week of three (3) ten-hour days or vice-versa. The base work hours for each officer will be "lap" shift hours. Shifts will not begin before 12:00pm and will end no later than 10:00pm. Fresno Police department shall inform the Housing Management Property Manager in advance if the work schedule changes;

- (vi) Submitting available Annual Crime Statistics for each complex, upon request of Housing Management District Manager;
- (vii) Attend the conferences with Housing Management District Manager upon request regarding resident concerns;
- (viii) Completing regular patrols per site; approximately two patrols in vehicle and one on foot; and
- (ix) In accordance with the Statute providing criminal history background checks through CLETS:

2. Criminal History Background Checks through CLETS by Fresno Police Department.

- (a) The two Sworn Police Officers provided hereunder by the Fresno Police Department, through the City, are utilized to run CLETS criminal history checks.
- (b) The Fresno Police Department will run criminal history checks on subjects submitted by the Fresno Edison Apartments II on an agreed upon request form, if authorized by signature of a designated Fresno Edison Apartments II staff member.
- (c) The Fresno Police Department will screen CLETS printouts for reportable offenses as specified in Penal Code Section 11105.03.
- (d) The Fresno Police Department will record reportable offenses on the Fresno Edison Apartments II request form and deliver a copy of the completed form with any reportable criminal history information to a designated Fresno Edison Apartments II staff member, within five working days from the date of the request. (Note: If it is known that the subject of a criminal history check is on probation or on parole, the document will be delivered to the appropriate probation or parole offices with a request to forward the document to the designated Fresno Edison Apartments II staff member.)
- (e) The Fresno Police Department will maintain a file on all Fresno Edison Apartments II criminal history checks, including the request form, any CLETS printouts and a copy of any criminal history information released to Fresno Edison Apartments II for a minimum of three years.
- (f) Only the Chief executive officers of Fresno Edison Apartments II and his/her designated staff member(s) of the Fresno Edison Apartments II, designated in writing to the Fresno Police Department by the chief

executive officer, may request and receive criminal information, subject to the following paragraph.

- (g) Designated Fresno Edison Apartments II staff granted access to criminal history information must pass a criminal history background check, which will require submitting their fingerprints to the California Department of Justice and the Federal Bureau of Investigation (FBI), and a California Department of Motor Vehicle clearance.
- (h) Designated Fresno Edison Apartments II staff will review and authorize, by signature, on the request form, all requests for criminal history check under the statute.
- (i) Any information obtained from CLETS criminal history pursuant to this Agreement is confidential and the Fresno Edison Apartments II shall not disclose or use the information for any purpose other than that authorized in the statute.
- (j) The criminal history information released to Fresno Edison Apartments II and all copies made from it shall be destroyed not more than thirty days after Fresno Edison Apartments II's final decision as to whether to act on the housing status of the individual to whom the information relates.
- (k) Fresno Edison Apartments II shall adopt regulations governing the receipt, maintenance and use of the criminal history information. The regulations shall include provisions that require notice that Fresno Edison Apartments II has access to criminal history information on applicants and employees who have access to Fresno Edison Apartments II residences.
- (l) Use of criminal history information is to be consistent with Title 24 of the Code of Federal Regulations and current regulations adopted by the Fresno Edison Apartments II.

3. Office Facilities and Reimbursement to City for Grant Related Activities.

- (a) Fresno Edison Apartments II agrees to provide a secure office at Sequoia Courts Terrace (CAL 6-5) for use by the Sworn Police Officer in the southwest district and a secure office at Cedar Courts (CAL 6-8) for use by the Sworn Police Officer in the southeast district. Each office shall be equipped with a telephone, computer and access to restroom facilities for the respective officer's use. At its sole cost and expense, Fresno Edison Apartments II shall be responsible for providing all utilities (HVAC, phone, internet, electricity, water, sewer, garbage, etc.), repair and maintenance services at each office.
- (b) For the aforementioned services, Fresno Edison Apartments II agrees to reimburse City for costs incurred by City hereunder, in an amount not to exceed \$15,425.50 for the period beginning July 1, 2019, and ending June 30, 2020.
- (c) The amount of \$15,425.50 is Fresno Edison Apartments II's prorated share of City costs. The aggregate costs are as follows:

- Salary and fringe benefits for two Sworn Police Officers - \$294,272
- Overtime for Sworn Police Officers - \$7,500
- Cellular and modem ongoing costs - \$1,740
- Vehicle O&M costs – 2 vehicles @ 25% - \$5,000

And other allowable costs as outlined in the OMB Circular A-87 (Revised 05/10/04).

The City will bill Fresno Edison Apartments II on a monthly basis. Payment of any bill shall be contingent on receipt of the weekly reports and completion of described activities.

4. Term.

The term of this Agreement shall commence on July 1, 2019, and shall end on June 30, 2020, subject to earlier termination as provided herein.

5. Termination.

(a) Either party may terminate this Agreement without cause upon 30 calendar days prior written notice to the other party.

(b) This agreement may be terminated immediately by either party upon 7 calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured with such 7 calendar days prior written notice and this shall constitute a material default and breach of this Agreement. The party terminating the Agreement may exercise any right, remedy (in law or equity) or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of this Agreement, or to recover, direct, indirect, consequential or incidental damages for the breach of the Agreement.

6. Compliance with Governing Law.

The services provided by the City under this Agreement are over and above the City's budgeted positions. The parties agree that RAD budget funds shall not be used to replace funds of, or positions, otherwise funded by the City.

As applicable, costs and expenditures must be allowable in accordance with OMB Circular A-87, *Cost principals for state, local and Indian Tribal Governments*. Capital Funds are subject to the Single Audit Act Amendments of 1996 and the OMB Circular, A-133, *Audits of state, local government and non-profit organizations*.

City agrees to provide any substantiation and support for services, fees, costs and expenses upon reasonable request of the Fresno Edison Apartments II for a period of not less than three years after final payment. Records of City's expenses pertaining to the services shall be kept on a generally recognized accounting basis and shall be available to Fresno Edison Apartments II or its authorized representatives upon request

during regular business hours throughout the life of this Agreement and for a period of three years after final payment. In addition, all books, documents, papers, and records of City pertaining to the services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

7. Capacity of City.

In rendering the aforesaid services, it is mutually understood and agreed that the City, its agents and employees, shall at all times be acting and performing independently and not as employees of Fresno Edison Apartments II. The Sworn Police Officers shall at all times be under the direction and control of and must report to the Chief of Police of the City of Fresno Police Department. Nothing in this Agreement and nothing in the course of dealings between Fresno Edison Apartments II and City shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship. City, and City's employees and agents, shall not be treated by Fresno Edison Apartments II as employees of Fresno Edison Apartments II for any purpose including, but not limited to, laws providing for Social Security taxes and benefits, state or federal unemployment compensation taxes, state or federal income tax withholdings or worker's compensation benefits. City agrees that it has sole responsibility to pay Social Security, State Disability Insurance, Worker's Compensation Insurance and all other wages and benefits applicable to its employees. City further agrees to hold Fresno Edison Apartments II harmless for any and all claims made with regard to such matters.

8. Indemnification and Insurance.

To the furthest extent allowed by law, Fresno Edison Apartments II shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the reckless disregard or willful misconduct of Fresno Edison Apartments II, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

To the furthest extent allowed by law, CITY shall indemnify, hold harmless and defend Fresno Edison Apartments II and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the reckless disregard or willful misconduct of CITY, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

The fact that insurance is obtained by Fresno Edison Apartments II shall not be deemed to release or diminish the liability of Fresno Edison Apartments II, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of

indemnification to be provided by Fresno Edison Apartments II. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Fresno Edison Apartments II, its principals, officers, agents, employees, persons under the supervision of Fresno Edison Apartments II, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

This section shall survive termination or expiration of this Agreement.

9. Attorney's fees.

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

10. Notices.

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, return receipt requested, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

11. Binding.

Once this Agreement is signed by the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assignees, transferees, agents, servants, employees and representatives.

12. Assignment.

There shall be no assignment by either party or its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assignees, shall be null and void unless approved in writing by the other party.

13. Waiver.

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

14. Governing Law and Venue.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purpose of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

15. Headings.

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

16. Severability.

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

17. Interpretation.

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

18. No Third Party Beneficiaries.

The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

19. Entire Agreement.

It is mutually understood and agreed that the foregoing constitutes the entire agreement between the parties for law enforcement services from the Fresno Police Department. There are no further portions of this agreement, whether prior or contemporaneous, express or implied, written or oral other than as set for in the provisions of this agreement. Any modifications or amendments to this agreement must be in writing and signed by both parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

By: _____
Andrew Hall, Chief of Police
Fresno Police Department

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvarian 11/22/19
for Senior Deputy City Attorney Date

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy

Addresses:
CITY:
City of Fresno Police Department
Attention: D.C. Michael Reid
Patrol Division
P.O. Box 1271
Fresno, CA 93715-1271

FRESNO EDISON APARTMENTS II,
a California limited partnership
By: Silvercrest, Inc. a California non-profit
benefit corporation
Its: Managing General Partner

By: Preston Prince 11-22-19
Secretary/Director Date

FRESNO EDISON APARTMENTS II,
AGP, LLC, a California limited liability
company
Its: Administrative General Partner

By: Housing Authority of the City of
Fresno, A California body corporate and
politic, its Member and Manager

By: Preston Prince 11-22-19
CEO/Executive Director Date

*If a General Partner is a corporation or
LLP, requires signatures of both
Chairman/President/VP and
CFO/Secretary/Treasurer for that partner

Addresses:
Fresno Edison Apartments II
Attention: Preston Prince
Executive Director/CEO
1331 Fulton Mall
Fresno, CA 93721