

Agenda Item: ID18-0096 (1-D)

Date: 1/11/18

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FRESNO CITY CLERK

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID18-0096 (1-D)

Contents of Supplement: MOU with the Housing Authority

Agenda Item Title

Approval of a Memorandum of Understanding with the Housing Authority of the City of Fresno, California and Silvercrest, Inc. for offsite improvements at 3039 N. Blackstone (Council District 7).

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

**MEMORANDUM OF UNDERSTANDING
WITH
THE HOUSING AUTHORITY OF THE CITY OF FRESNO, CALIFORNIA AND
SILVERCREST, INC. FOR THE CONSTRUCTION OF SUSTAINABLE
TRANSPORTATION INFRASTRUCTURE AND TRANSIT RELATED AMENITIES FOR
3039 N. BLACKSTONE AVENUE**

This Memorandum of Understanding (Agreement) is entered into this ____ day of January, 2018, by and between the CITY OF FRESNO, a municipal corporation, (City), and THE HOUSING AUTHORITY OF THE CITY OF FRESNO, CALIFORNIA, a public body corporate and politic, and SILVERCREST, Inc., a California non-profit public benefit corporation (collectively, Developer).

RECITALS

WHEREAS, the State of California, the Strategic Growth Council (SGC) and the Department of Housing and Community Development (HCD) issued a Notice of Funding Availability dated October 2, 2017, (the AHSC NOFA), under the Affordable Housing and Sustainable Communities (AHSC) Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200; and

WHEREAS, Developer is applying for AHSC Funds in response to the AHSC NOFA to provide funding for (A) construction of the **3039 N. Blackstone Avenue** affordable housing project in Fresno, California (the Housing Project); (B) the construction of certain housing related infrastructure (the HRI Improvements); (C) the construction of certain sustainable transportation infrastructure (the STI Improvements); (D) the construction of certain transit related amenities (the TRA Improvements); and (E) certain costs related to ongoing programming (the AHSC Programs). These improvements are described in more detail in the Final Application to be submitted by January 16, 2018, (collectively, the AHSC Application); and

WHEREAS, the AHSC Application seeks an award to the Developer in an aggregate amount of up to \$13,500,00 in AHSC Funds, as set forth herein and in Exhibit A, which the parties anticipate may consist of: (A) \$7,061,076 of AHSC loan Funds for a permanent loan (AHSC Loan) which will be disbursed to a limited partnership to be formed later (the Partnership), for construction of the Housing Project; (B) \$2,200,000 of AHSC grant funds shall be used for the purpose of reimbursing the cost of the HRI Improvements; (C) \$3,358,950 of the AHSC grant funds for the purpose of reimbursing the cost of the STI Improvements; (D) \$705,000 of AHSC grant funds for the purpose of reimbursing the cost of the TRA Improvements; and (E) \$150,000 of AHSC grant funds for reimbursing the costs of the AHSC Programs. The AHSC grants shall be referred to collectively as the AHSC Grants. The AHSC Loan and the AHSC Grants are collectively referred to herein as the AHSC Financing; and

WHEREAS, the City and Developer are required to enter into an Agreement in order to comply with the specific AHSC Program Threshold Requirement stated in Section 106(a)(12) of the 2017 AHSC Program Guidelines dated July 17, 2017, as amended by the technical amendments dated August 14, 2017, and October 23, 2017,

(the Transportation City Prior Experience Threshold Requirement) which allows applicants to demonstrate the requisite transportation experience by using the past experience of work completed of a non-applicant locality so long as the applicant provides an executed agreement with the non-applicant locality for the completion of the related work in the AHSC Application for which funding is sought. The purpose of this Agreement is to comply with the Transportation City Prior Experience Threshold Requirement; and

WHEREAS, the City is a non-applicant, but will perform STI Improvements and TRA Improvements included in the AHSC Application (collectively, the Transit Obligations) as set forth in this Agreement and in Exhibit B; and

WHEREAS, the City can demonstrate prior experience and provide evidence of at least two prior projects that are similar in scope and size which have been completed during the ten years preceding January 16, 2018, as set forth in this Agreement and in Exhibit C; and

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative:	Scott Mozier, Public Works Director 2600 Fresno Street, Room 4016 Fresno, CA 93721-3623 Tel: (559) 621-8811
Developer Representative(s):	Housing Authority of the City of Fresno, California Attn: CEO/Executive Director 1331 Fulton Street Fresno, CA 93721 Tel: (559) 443-8400
	Silvercrest, Inc. Attn: Secretary/Director 331 Fulton Street Fresno, CA 93721 Tel: (559) 443-8400

2. ROLES, CONTRIBUTIONS, AND RESPONSIBILITIES

A. Upon full funding of the AHSC Grants, the City, as a non-applicant, will:

(i) Perform \$3,358,950 worth of sidewalks, bike paths, and street improvements (STI Improvements) and \$705,000 worth of bus stop upgrades and bus fleet enhancements (TRA Improvements) included in the AHSC Application (collectively, the Transit Obligations) as set forth in Exhibit B.

(ii) Demonstrate prior experience and provide evidence of at least two projects that are similar in scope and size which have been completed during the ten years preceding Jan 16, 2018, as set forth in this Exhibit C.

(iii) Assume financial responsibility for developing, constructing, and completing the Transit Obligations in accordance with the terms of the AHSC documents.

(iv) Provide DEVELOPER with copies of all requisitions for work related to their respective portions of the project, the notice of completion, and other documents related to their respective work that another party may reasonably request.

(v) Abide by all requisite HCD grant administration regulations that specify indemnity, payment, performance schedules, and progress reports.

(vi) Indemnify, defend, protect and hold harmless DEVELOPER, and its affiliates, directors, officers, partners, members, agents and employees, against any and all claims, actions, suits, causes of action, losses, liabilities, damages or expenses (collectively, the Claims) arising out of City's failure to carry out any Transit Obligations in accordance with the terms of the AHSC documents and this Agreement, or abide by all requisite HCD grant administrative regulations.

B. DEVELOPER will:

(i) Assume financial responsibility for constructing and developing the Housing Project, the HRI Improvements and the AHSC Programs (together the Developer Obligations), and for all costs and expenses related thereto.

(ii) Enter into standard agreements, disbursement agreements, and regulatory agreements with HCD where, subject to Section 2A above, DEVELOPER will be liable for the full and timely performance by the parties to complete the obligations set forth therein, including completion of the Housing Project, HRI, STI and TRA Improvements, and funding of the AHSC Programs, as described in the AHSC Application. The AHSC Application and all standard agreements required by HCD in connection with AHSC Financing shall be collectively referred to as "AHSC Documents."

(iii) Assume financial responsibility for paying all costs required to complete the Housing Project and all associated improvements including, but not limited to HRI Improvements, STI Improvements and TRA Improvements, irrespective of whether such costs exceed the AHSC Loan and AHSC Grant except that such obligations shall in no way impact DEVELOPER'S ability to enforce the provisions in Section 2A(vi) above.

(iv) Provide City with copies of all requisitions for work related to their respective portions of the project, the notice of completion, and other documents related to their respective work that another party may reasonably request.

(v) Abide by all requisite HCD grant administration regulations that specify indemnity, payment, performance schedules, and progress reports.

(vi) Indemnify, defend, protect and hold harmless CITY, and its affiliates, directors, officers, partners, members, agents and employees against any and all Claims arising out of DEVELOPER'S failure to carry out the Developer Obligations, or abide by all requisite HCD grant administrative regulations.

(vii) Develop, construct, and complete the Transit Obligations in accordance with the terms of the AHSC documents. In the event that DEVELOPER reasonably determines that the City has failed to complete in a timely manner the obligations as described in Section 2(A) above. In such an event, DEVELOPER will provide to City an "intent to takeover work" notice with a request that the City cure all deficiencies. The parties will then work collaboratively to resolve such deficiencies. In the event that the parties cannot resolve such concerns within 30 days, DEVELOPER shall complete the work and invoice the City, which City shall promptly pay, for DEVELOPER'S actual and reasonable cost to construct and complete the Transit Obligations. In the event DEVELOPER takes over the work, DEVELOPER shall be responsible to obtain all required permits and pay the City all plan check and inspection fees for the work within the street right-of-way. DEVELOPER shall also provide the City up to 30 calendar days to complete an accounting of all project expenses up to the take-over date, in order for those costs to be invoiced and reimbursed by grant proceeds.

3. EFFECTIVENESS, DURATION AND TERMINATION

This Agreement shall be effective upon its complete execution by the parties' authorized agents and shall terminate upon the earlier of (i) non-award of AHSC funds; (ii) completion of all obligations under the AHSC documents; or (iii) mutual agreement of the parties hereto. Either party may terminate this Agreement with cause upon written notice to the other party, including the Construction Lender as defined in Section 12, following the other party's failure to reasonably cure an event of non-performance hereunder following thirty days written notice thereof. Termination shall be effective (the Effective Date of Termination) as of the date specified in said notice of termination. Upon such termination, all rights and obligations of each party under this Agreement shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein.

4. RECORDKEEPING AND PERFORMANCE DATA

Each party shall keep and maintain proper records and documentation sufficient to substantiate its contributions hereunder, and shall make such available for review and audit during normal operating hours upon the reasonable written request of the other party for a period of three years following expiration or earlier termination of this Agreement.

5. COMPLIANCE WITH GOVERNING LAW

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this Agreement shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, and ethnicity, status as a disabled veteran or veteran of the Vietnam era.

6. CAPACITY OF CITY AND DEVELOPER

Each party is acting in an independent contractor capacity. Nothing in this Agreement and nothing in the course of dealings between the parties hereunder shall be deemed to

create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

In addition and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, workers' compensation insurance, benefits and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of the DEVELOPER. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable. Conversely, personnel supplied by DEVELOPER will not for any purpose be considered employees or agents of the City. DEVELOPER assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The City and DEVELOPER agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. The City's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by DEVELOPER. DEVELOPER agrees and acknowledges that DEVELOPER's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the City.

The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each shall be solely responsible for payment of all sales, use, or other taxes assessed against or associated with the performance of each party's respective obligations or on the exercise of their rights under this Agreement, including without limitation income, payroll or employment-related taxes and payments.

Neither party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior written consent of both parties.

7. INDEMNIFICATION

DEVELOPER 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) incurred by DEVELOPER, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of DEVELOPER or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided

nothing herein shall constitute a waiver by Housing Authority of the City of Fresno, California of governmental immunities including California Government Code section 810 et seq..

City shall indemnify, hold harmless and defend DEVELOPER 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) incurred by City, DEVELOPER or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

DEVELOPER agrees that this Agreement shall in no way act to abrogate or waive any immunities available to City under the Tort Claims Act of the State of California.

In the event of concurrent negligence on the part of DEVELOPER or any of its officers, officials, employees, agents or volunteers, and City or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

8. INSURANCE

(a) Throughout the life of this Agreement, each party shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by either party's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, either party or any of their subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to City or DEVELOPER shall be withheld until notice is received by the other that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY or DEVELOPER as the case may be. Any failure to maintain the required insurance shall be sufficient cause for the non-breaching party to

terminate this Agreement. No action taken by CITY or DEVELOPER pursuant to this section shall in any way relieve DEVELOPER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by City or DEVELOPER shall not be deemed to release or diminish the liability of City or DEVELOPER, as the case may be, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY or DEVELOPER 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 City or DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of City or DEVELOPER, or their vendors, suppliers, invitees, contractors, sub- contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY or DEVELOPER, their officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE
EXHIBIT A

CITY and DEVELOPER shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include

Transportation Pollution Liability insurance covering materials to be transported by DEVELOPER pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event CITY or DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY and DEVELOPER, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

DEVELOPER and CITY shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DEVELOPER and CITY shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the other party's Risk Manager or his/her designee. At the option of the CITY'S or DEVELOPER'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects DEVELOPER'S or CITY, its officers, officials, employees, agents and volunteers; or
- (ii) DEVELOPER or CITY shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall DEVELOPER and CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. DEVELOPER and City are also responsible for providing written notice to the other under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DEVELOPER and CITY, as the case may be, shall furnish the other with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY or DEVELOPER, City and

DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

- (ii) The Commercial General, Contractors Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name City and Developer, its officers, officials, agents, employees and volunteers as an additional insured. City and DEVELOPER shall each establish additional insured status for the City or DEVELOPER and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General, Contractors Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the DEVELOPERS' insurance shall be primary to and require no contribution from the City and DEVELOPER. The Commercial General and Contractors Pollution policies are required to include primary and non contributory coverage in favor of the City and DEVELOPER for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If DEVELOPER or City maintains higher limits of liability than the minimums shown above, City and DEVELOPER shall each require and shall be entitled to coverage for the higher limits of liability maintained by the other.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, DEVELOPER'S and City's insurance coverage shall be primary insurance with respect to the CITY and DEVELOPER, their officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the DEVELOPER'S and City's insurance and shall not contribute with it.

- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY and DEVELOPER, their officers, officials, agents, employees and volunteers.
- (viii) The Commercial General, Contractors Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY and DEVELOPER, their officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - DEVELOPER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, DEVELOPER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of DEVELOPER shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by DEVELOPER.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, DEVELOPER must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.

- (v) These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTOR- If DEVELOPER or City subcontracts any or all of the services to be performed under this Agreement, DEVELOPER and City shall require, at the discretion of each party's Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City or DEVELOPER to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by each party's Risk Manager or designee. If no Side Agreement is required, DEVELOPER and City will be solely responsible for ensuring that its subcontractor maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

9. ATTORNEY'S FEES

If a 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/their reasonable attorney's fees and legal expenses.

10. NOTICES

Any notice required or intended to be given to a party under the terms of this Agreement shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express, DHL, or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the DEVELOPER Representative, or (c) three business days after the date of mailing (postage pre- paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

11. BINDING

Once this Agreement is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The terms and conditions of this Agreement, express or implied, exist only for the benefit of the parties to this Agreement, their respective successors and assigns, and the Construction Lender as set forth in Section 12. No other person or entity will be deemed to be a third party beneficiary of this Agreement.

12. ASSIGNMENT

City hereby acknowledges and approves the assignment by DEVELOPER and the Partnership to the Housing Project's senior lender (Construction Lender) of all their respective right, title and interest in, to and under the Agreement as collateral security for the Partnership's obligations to Construction Lender under, and in connection with

the Construction Lender's loan to the Partnership. In the event Construction Lender forecloses upon the Collateral, City hereby agrees that Construction Lender shall have all of the Developer's rights and interests under the Agreement. Construction Lender is hereby made an express third party beneficiary of this Section. There shall be no other assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any other attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

13. WAIVER

The waiver by any 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 a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and approved by 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.

No action or omission by either party shall constitute a breach of this Agreement unless the injured party first notifies the other party of the purported breach in writing setting forth the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the Agreement shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

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 purposes 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. REPRESENTATIONS AND WARRANTIES

Each party hereby represents and warrants to the other party, and agrees that it has the full power and authority to enter into this Agreement and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement.

19. ENTIRE AGREEMENT

It is mutually understood and agreed that the foregoing constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this Agreement as of the date first set forth above:

CITY OF FRESNO,
a municipal corporation

By: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvanian
Tracy N. Parvanian Date
Deputy City Attorney 1-8-18

ATTEST
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

HOUSING AUTHORITY OF THE CITY OF
FRESNO, CALIFORNIA,
a public body corporate and politic

By: [Signature]

Name: Roston Prince

Title: CEC

SILVERCREST, INC

By: [Signature]

Name: Roston Prince

Title: Secretary/Director

Attachments:

- Exhibit A – AHSC Application Submission
- Exhibit B – City's Scope of Work: Sustainable Transportation Infrastructure (STI) and Transit Related Amenities (TRA)
- Exhibit C - City's Prior Experience of Similar Projects Completed

EXHIBIT A**AHSC Application Submission**

Responsible Party	Type of Funds	Amount of Funds	Purpose	Estimated Date of Completion
Developer	AHSC Affordable Housing Development Loan	\$7,061,076	Construction of affordable housing units	5 years from date of AHSC award
Developer	AHSC Housing Related Infrastructure Grant	\$2,200,000	Infrastructure on and around housing site	5 years from date of AHSC award
Developer	AHSC Program funds	\$150,000	Programs related to transit use and sustainable transportation	Ongoing for three years after the occupancy of the project

Responsible Party	Type of Funds	Amount of Funds	Purpose	Estimated Date of Completion
City of Fresno	AHSC Sustainable Transportation Infrastructure (STI)	\$3,358,950	Exhibit B	5 years from date of AHSC award
City of Fresno	AHSC Transit Related Amenities (TRA)	\$705,000	Exhibit B	5 years from date of AHSC award

EXHIBIT B

City's Scope of Work: Sustainable Transportation Infrastructure (STI) and Transit Related Amenities (TRA)

STI Scope of Work:

Del Mar/Ashlan and Del Mar/Shields HAWK signalized pedestrian crossings	\$600,000
Construct missing sidewalks on Del Mar	\$550,000
Blackstone bulb-outs, west side of Blackstone at all local intersections between Shields and Clinton (i.e. Simpson, Cornell, etc.) except for Princeton	\$620,000
Blackstone pedestrian-scale street lighting project estimate between Clinton and Shields	\$575,000
Install countdown-style pedestrian heads at 25 traffic signals within a one-mile radius of the site	\$250,000
Maroa road diet and bike lanes	\$229,100
Wishon improvement to buffered bike lanes	\$134,850
Urban Greening	\$400,000
TOTAL STI Estimate of Scope	\$3,358,950

TRA Scope of Work:

Transit stop amenities to upgrade thirty (30) bus stops on Shields	\$705,000
TOTAL TRA Estimate of Scope	\$705,000

EXHIBIT C

City's Prior Experience of Similar Projects Completed

Project Name	Description	Total Cost	Completion/ Close-Out
O Street, SR-41 to Ventura St	Streetscape improvements – curb, gutter, sidewalk reconstruction with landscaping, lighting; traffic signal modifications	\$2,123,416	May 2011
Fresno & Tulare street trees & irrigation	Installation of new street trees and irrigation in Downtown Fresno	\$210,398	June 2008
Bullard Ave sidewalks, Glenn to Del Mar	Installation of sidewalks to close a gap in the pedestrian network	\$360,001	June 2012
Cedar Ave bikeway, Floradora to Los Altos	Restriping of the roadway to create a complete street with bike lanes	\$351,846	April 2012
Cedar Ave sidewalks, Fir to Alluvial	Installation of sidewalks to close a gap in the pedestrian network.	\$205,909	June 2012
Fruit & Saginaw traffic signal	Traffic signal installation to improve pedestrian and school safety.	\$249,116	December 2011
West Ave bike lanes, Yale to Fairmont	Installation of Class II bike lanes	\$299,782	November 2012
Gettysburg bike lanes	Road diet and restriping to add Class II bike lanes, Fresno to Winery	\$585,735	February 2013
Sugar Pine Trail underpass	Grade separation of the crossing at Shepherd Avenue, including underpass construction, lighting and landscaping	\$1,835,113	April 2014
Shields Ave bike lanes, West to Maple	Installation of Class II bike lanes, including parking bays where needed	\$234,455	July 2014
Fulton Street Reconstruction	Reconstruction of a pedestrian mall as a complete 2-lane street, including decorative concrete, fountains, art restoration, pedestrian-scale lighting and pedestrian scramble traffic signals	\$23 million	Substantial completion - open to traffic October 2017