

**SECOND AMENDMENT TO CONSULTANT SERVICES AGREEMENT BY AND  
BETWEEN FAIRFIELD HOUSING AUTHORITY AND NAN MCKAY AND  
ASSOCIATES, INC.**

THIS SECOND AMENDMENT TO CONSULTANT SERVICES AGREEMENT ("Second Amendment") is made and entered into on June 07, 2018, by and between the City of Fairfield Housing Authority, a Public Housing Authority ("FHA") and Nan McKay and Associates, Inc. ("CONSULTANT").

*RECITALS*

A. The FHA and CONSULTANT entered into that certain Consultant Services Agreement dated April 12, 2017 ("Original Agreement") whereby CONSULTANT agreed to provide support services to the FHA on a time and materials basis, with the total cost not to exceed \$114,538.00 with a term ending on May 31, 2018.

B. The FHA and CONSULTANT entered into a First Amendment to the Original Agreement dated January 29, 2018 whereby CONSULTANT agreed to continue to provide support services to the FHA on a time and materials basis that increased the not to exceed amount specified in the Original Agreement by \$56,350.00 to \$170,888.00 and modified the ending term date from May 31, 2018 to June 30, 2018.

C. THE FHA desires to increase the not to exceed amount specified in the Original Agreement and amended by the approved and executed First Amendment the Original Agreement to \$236,811.00, and to extend its term through the end of the 2018 calendar year.

D. The Original Agreement, the First Amendment and this Second Amendment are collectively referred to herein as the "Agreement." There have been no other amendments to or modifications to this Agreement other than the ones specified herein.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the FHA and CONSULTANT hereby agree as follows:

1) SERVICES. Exhibit "A" to the Original Agreement is hereby deleted in its entirety and replaced with the revised Exhibit "A," attached to this Second Amendment and incorporated herein. Services have been updated to reflect consultant work tasks performed and completed and to reflect needed work tasks for the term of this Second Amendment.

2) PAYMENT. Exhibit "B" to the Original Agreement is hereby deleted in its entirety and replaced with the revised Exhibit "B," attached to this Second Amendment and incorporated herein.

3) TERM. This term of the Agreement is hereby amended in its entirety to read as follows:

"TERM. This Agreement shall be in effect until December 31, 2018."

4) RATIFICATION; ENTIRE AGREEMENT. FHA and CONSULTANT do hereby ratify and affirm all of the terms, conditions and covenants of the Agreement as amended by this Second Amendment, The Original Agreement, together with the First Amendment and this Second Amendment, along with any exhibits and attachments to the Original Agreement, the First Amendment and this Second Amendment do hereto constitute the entire agreement between the FHA and CONSULTANT. This Agreement may be altered, amended or revoked only by an instrument in writing signed by both the FHA and CONSULTANT.

5) GOVERNING LAW. This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

6) COUNTERPARTS. This Second Amendment may be executed by one or more of the parties to this First Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

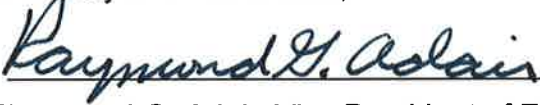
7) FULL FORCE AND EFFECT. Except as expressly modified or supplemented by this First Amendment, all other provisions of the Agreement shall remain unaltered and in full force and effect. In the event of a conflict between the provisions of this Second Amendment and the provisions of the Agreement, the provisions of this Second Amendment shall control.

**IN WITNESS WHEREOF**, the parties hereto have duly executed and delivered this Second Amendment, all as of the day and year first written above.

Fairfield Housing Authority

By:   
David A. White, Executive Director *KLS*

Nan McKay and Associates, Inc.

By:   
Raymond G. Adair, Vice President of Finance

## **EXHIBIT "A"**

### **SERVICES**

CONSULTANT will provide on-site and off-site services comprised of:

1. Conduct supervisory reviews required under HUD SEMAP regulations
2. Preparation and submittal of FHA's SEMAP certification to HUD
3. Focused training as needed, including:
  - a. Customized Customer Service Training (Include 8 training books in bid)
  - b. Administrative Plan Training
4. Performance of quality control improvement efforts consisting of:
  - a. Provision of feedback and guidance to housing staff on quality control related improvement opportunities
5. Continued business process improvements focused on:
  - a. Consistency;
  - b. Efficiency, and
  - c. Excellent customer service
6. Conduct, as requested, policy and document updates
7. Assistance in lease monitoring to ensure performance consistency and conformance to federal regulations
8. Conduct, as requested, analytical actions (e.g. rent burden analyses, SAFMR analyses)
9. Conduct, as requested, individual or collective staff coaching

**EXHIBIT "B"**

**PAYMENT**

- (1) The total contract price for services rendered by CONSULTANT under this Agreement shall not exceed the amount of TWO HUNDRED THIRTY-SIX THOUSAND, EIGHT HUNDRED AND ELEVEN DOLLARS (\$236,811.00).

The hourly labor rates for the period of July 1, 2018 to December 31, 2018 are as shown herein below:

<u>Personnel</u>	<u>Hourly Rate</u>
Senior Consultant	\$150.00

- (2) CONSULTANT's administrative, overhead, secretarial time or overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included in the hourly labor rates. However, the rates listed above do not include project related expenses such as travel and other direct costs. Receipts for all such direct costs in excess of \$50 must be furnished with monthly invoices.

- (3) Upon receipt of an invoice for time and materials and successful completion of services itemized in Exhibit "A" Scope of Services, a payment in the amount of the invoice shall be made to CONSULTANT.

Payment shall be made to CONSULTANT:

Nan McKay and Associates, Inc.  
1810 Gillespie Way #202  
El Cajon, CA 92020  
(619) 258-5791  
Attn: Accounts Receivable

Invoices shall be submitted to FHA via:

City of Fairfield  
Attn: Director of Community Development  
Fairfield City Hall  
1000 Webster Street, 2<sup>nd</sup> Floor  
Fairfield, CA 94533-4884

Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the FHA and CONSULTANT, and shall be billed on a time and materials basis specified above, herein Exhibit "B".

## EXHIBIT "C"

### GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of FHA. FHA shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, FHA shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to FHA that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to FHA that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession, including a City of Fairfield business license.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Services described in Exhibit "A".

4) CONSULTANT NOT AN AGENT. Except as FHA may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of FHA in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind FHA to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that FHA, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from FHA of the desire of FHA for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to FHA pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. FHA shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the FHA at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of FHA.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the FHA.

10) INDEMNIFY AND HOLD HARMLESS.

a) If AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(c)(2), to the fullest extent allowed by law, CONSULTANT shall hold harmless, defend and indemnify the FHA, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the FHA.

b) If AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, to the fullest extent allowed by law, CONSULTANT shall indemnify, defend, and hold harmless the FHA, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the FHA, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

CONSULTANT'S responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

11)PROHIBITED INTERESTS. No employee of the FHA shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the FHA if this provision is violated.

12)LOCAL EMPLOYMENT POLICY. The FHA desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The FHA encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13)CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the FHA or any FHA official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any FHA decision beyond these conclusions, advice, recommendation, or counsel.

14)EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the FHA executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to FHA to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, Limited Liability Corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

**EXHIBIT "D"**

**INSURANCE REQUIREMENTS**

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- Fidelity / Crime / Dishonesty Bond in the minimum amount of \$ \_\_\_\_\_
- MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the FHA. At the option of the FHA, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the FHA, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.



b) The general and automobile liability policies (and if applicable, pollution liability, garage keeper's liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The FHA, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the FHA, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the FHA, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the FHA, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the FHA, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the FHA.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the FHA.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the FHA with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the FHA or on forms equivalent to CG 20 10 11 85 subject to FHA approval. All insurance certificates and endorsements are to be received and approved by the FHA before work commences. At the request of the FHA, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.