

# PALM DESERT HOUSING AUTHORITY STAFF REPORT

MEETING DATE: November 16, 2023

PREPARED BY: Jessica Gonzales, Housing Manager

REQUEST: APPROVE A MODIFIED CONTRACT FOR AFFORDABLE HOUSING COMPLIANCE AND PROPERTY MANAGEMENT SERVICES WITH FALKENBERG/GILLIAM AND ASSOCIATES, INC.

## **RECOMMENDATION:**

Approve modifications to contract for Affordable Housing Compliance and Property Management Services for the Authority-owned Properties with Falkenberg/Gilliam and Associates, Inc.

## **BACKGROUND/ANALYSIS:**

On October 12, 2023, the Authority Board approved the award of contract for Affordable Housing Compliance and Property Management Services for the Authority Owned Properties to Falkenberg/Gilliam and Associates, Inc. ("FGA").

Staff and FGA have been working through the terms of the final version of the contract. FGA has requested modifications to the terms of the insurance requirements of the contract to bring them in line with industry standards, as well as to accommodate the ageing of the facilities and their current state.

After further discussion with FGA and consultation with City Attorney, City Manager and the City/Authority Joint Powers Insurance Authority ("JPIA"), the Authority agreed to the following changes:

Agreement Section	Original Term	Requested Modification	Agreed Upon Modification
24	FGA indemnifies City/Authority	City/Authority adds FGA as additional insured on City/Authority policy.	FGA now indemnified by City/Authority except for losses arising out of FGA's sole negligence, gross negligence, or willful misconduct, or for claims covered by insurance required by section 25 and with caveat that FGA must provide minimum weekly reporting on exterior condition and bi-annual report on unit interiors.
25 (a)	General Liability (GL) Required at \$2M/\$4M plus \$5M umbrella	No GL Requirement	No GL Requirement (coverage instead provided by City/Authority) with caveat that FGA must provide minimum weekly report on exterior condition and bi-annual report on unit interiors.
25 (c)	Professional Liability (Errors and Omissions) \$1M	No change	Increased PL Requirement to \$2M per claim.
25G (new)	N/A	N/A	Add Employment Practices Liability at \$1M/\$2M to cover discrimination, wrongful termination, harassment and/or other employment-related claims.

*All other terms of the agreement remain in full effect unless negotiated and approved by the Executive Director, pursuant to October 12, 2023 action.*

Adding indemnification by City/Authority in favor of FGA acknowledges the concerns of aging of the properties, that internal staff has been and will continue to be addressing to ensure all deferred maintenance is managed. It is also agreed that the Authority will include FGA as additionally insured on its liability coverage except for losses arising out of FGA's sole negligence, gross negligence, or willful misconduct, to the extent that weekly reporting on exterior conditions and bi-annual unit interiors are provided; to ensure maintenance efforts are on target. This will negate the need for the extra General Liability coverage requested from FGA and is consistent with other local housing authority requirements. In return, FGA has agreed to double their errors and omission coverage from \$1M to \$2M per claim and add employment practices liability insurance in the amount of \$2M to ensure the City is adequately indemnified against claims arising from FGA controllable practices. This negotiation and evolution of coverages is being recommended to the Authority as a reasonable middle ground and acknowledgment of risk by both parties.

Additionally, to enable a smooth transition of property management responsibilities from RPM Company ("RPM"), the current property manager, to FGA, an addendum has been agreed to with FGA.

Staff recommends approval of the modifications to the insurance requirements as listed and agreed to by all parties, including the addendum.

**Legal Review:**

This report has been reviewed by the City Attorney's office.

**Appointed Body Recommendation:**

The November 15, 2023, Housing Commission meeting was canceled due to lack of quorum, therefore this item will be considered as a receive and file at its next regular meeting on December 13, 2023.

**FINANCIAL IMPACT:**

The cost to add FGA as additionally insured under the Authority's liability policy is estimated at \$171,000 per year. Upon execution of the final version of the agreement, staff will analyze all changes and determine if an appropriation is necessary from the Housing Authority fund balance. If one is necessary, staff will request one at midyear. There is no direct financial impact to the General Fund from this action.

**ATTACHMENTS:**

1. Draft Management Services Agreement
2. Addendum to Management Services Agreement