



City of San Leandro

Meeting Date: May 1, 2017

Staff Report

File Number: 17-190

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.K.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving a Consulting Services Agreement for \$193,595 of Community Development Block Grant (CDBG) Funds Between the City of San Leandro and Rebuilding Together Oakland-East Bay for the Provision of Housing Rehabilitation Grants

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt a resolution approving a Consulting Services Agreement with Rebuilding Together Oakland-East Bay for \$193,595 to administer the City's Housing Rehabilitation Program from May 1, 2017 through June 30, 2018. This Community Development Block Grant (CDBG) Housing Activity project is authorized by the City Council as part of the City's U.S. Department of Housing and Urban Development (HUD) Annual Action Plans and will be funded by CDBG grant funds.

BACKGROUND

Since 1989, the City's Housing Rehabilitation Program (Housing Rehab Program) has been popular and effective in assisting very low-income homeowners, especially fixed-income seniors, to improve and affordably remain in their homes. . The program also enables seniors to age in place, a current General Plan Housing Element goal.

The Housing Rehab Program provides grants of up to \$5,000 to homeowners to improve and maintain their homes. The grants, which are available to eligible owner-occupants of single-family homes, duplexes, and mobile homes, can pay for minor home repair, mobile home repair, accessibility, exterior paint, exterior yard clean-up, and seismic strengthening. Successfully completed rehabilitation projects include sewer lateral replacements, water heater replacements, roof replacements and repairs, electrical repairs, plumbing repairs, installations of ADA compliant bathroom fixtures, mobile home leveling and new mobile home skirting. Eligibility is based on income. For example, the annual income of a one-person household must not exceed \$52,650 and the annual income of a two-person household must not exceed \$60,150.

Due to limits in City staffing and technical capacity, the City began outsourcing administration of the program in 2003 to Neighborhood Solutions, an experienced administrator of municipal rehabilitation programs. In January 2017, due to unexpected and extenuating circumstances, Neighborhood Solutions informed the City that they would no longer be able to administer the Housing Rehab Program effective immediately.

Consequently, the City expeditiously issued a Request for Proposal for administration of the Housing Rehab Program on January 19, 2017. The City received only one proposal from Rebuilding Together Oakland East Bay (Rebuilding Together). Rebuilding Together is an affiliate of Rebuilding Together, Inc., which was formerly known as Christmas in April, a leading nonprofit working to preserve affordable homeownership and revitalized communities.

Analysis

Rebuilding Together has the expertise and experience to administer San Leandro's Housing Rehabilitation Program. Rebuilding Together currently administers the housing rehabilitation programs for the Cities of Oakland and Hayward. Rebuilding Together staff has the knowledge of construction standards and is also well versed in the regulations and requirements of HUD's CDBG program. The City Council also recently approved in March 2017 a contract with Rebuilding Together to administer a similar home improvement grant program for Trailer Haven Mobile Home Park residents.

Since the dissolution of the City's Redevelopment Agency in 2012, the Housing Rehab Program has been funded solely with federal Community Development Block Grant (CDBG) funds. Prior to the dissolution of the City's Redevelopment Agency, Housing Set-Aside funds were used to fund both grants and loans to income eligible homeowners.

Rebuilding Together will serve as the City's program administrator and provide administrative services such as:

- reviewing prospective homeowners' applications for income-eligibility
- providing inspection services,
- managing construction progress and completion,
- monitoring contractors for compliance with federal CDBG regulations as well as with local and State health, safety, and building laws.

The contract will allow Rebuilding Together to award grants to approximately twenty-five (25) homeowners until June 30, 2018. The \$193,595 budget allocates \$34,500 to Rebuilding Together's administrative budget and the remaining \$159,095 for rehabilitation grants directly to qualified homeowners.

Current Agency Policies

Current Council policy is defined by the FY 2015-2019 Consolidated Plan, adopted by Resolution No. 2015-080 on April 20, 2015.

Previous Actions

On May 2, 2016, the City Council approved the FY 2016-2017 Action Plan; this housing activity program is described in the Action Plan.

Applicable General Plan Policies

Housing Element Policy 56.01, Rehabilitation of Owner-Occupied Housing -- undertake a range of programs that assist private property owners, particularly low- and moderate-income owners, in maintaining and improving the condition of their homes.

Environmental Review

National Environmental Protection Act (NEPA) environmental review of this program is complete.

Fiscal Impacts

This Housing Rehabilitation Program will cost \$193,595. It will be funded, in part, with the \$84,094 current CDBG balance for 2016-17 in account number 165-43-232. The remaining \$109,501 will be funded with the proposed CDBG allocation from the U.S. Department of Housing and Urban Development (HUD) for 2017-18. HUD has not released the final 2017-18 CDBG funding as of April 19, 2017. If the allocation is less than \$100,000, then the City will amend the contract with Rebuilding Together, accordingly.

Budget Authority

Budget authority for CDBG funds is derived from Title I of the Housing and Community Development Act of 1974 (24 CFR 570 et seq.).

ATTACHMENT

Attachment(s) to Resolution

2017 CDBG Consulting Services Agreement between City and Rebuilding Together
Oakland-East Bay

PREPARED BY: Steve Hernandez, Housing Specialist II, Community Development
Department



City of San Leandro

Meeting Date: May 1, 2017

Resolution - Council

File Number: 17-191

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION to Approve a Consulting Services Agreement for \$193,595 of Community Development Block Grant (CDBG) Funds Between the City of San Leandro and Rebuilding Together Oakland East Bay for the Provision of Housing Rehabilitation Grants (Provides grants to approximately 25 homeowners for minor home repair, mobile home repair, accessibility, exterior paint, exterior yard clean-up, and seismic strengthening. Agreement includes \$34,500 for Program Administration and \$159,095 for grants.)

WHEREAS, an agreement between the City of San Leandro and Rebuilding Together Oakland East Bay, a copy of which is attached, was presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That said agreement with Rebuilding Together Oakland East Bay is hereby approved and CDBG funds are hereby authorized in the amount of \$193,595 for the Housing Rehabilitation Program.
2. That the City Manager is hereby authorized to execute all agreements to effect this Resolution.

**COMMUNITY DEVELOPMENT BLOCK GRANT
CONSULTING SERVICES AGREEMENT
BETWEEN THE CITY OF SAN LEANDRO
AND
REBUILDING TOGETHER OAKLAND EAST BAY**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT CONSULTING SERVICES AGREEMENT ("Agreement") is made at San Leandro, California, as of [May 15, 2017](#), by and between the CITY OF SAN LEANDRO, a California charter city ("City") and REBUILDING TOGETHER OAKLAND EAST BAY, a California non-profit corporation ("Consultant").

R E C I T A L S

A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 *et seq.*), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 *et seq.* ("Regulations").

B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.

C. The Consultant proposes to provide services to very low/low income persons as set forth in the "Scope of Services" attached hereto as Exhibit "A."

NOW, THEREFORE, the parties hereto agree as follows:

1.0 **TERM OF AGREEMENT.** Unless earlier terminated in accordance with Section 3.3 or Section 8.4 or amended in accordance with Section 10.3, this Agreement shall continue in force and effect until [June 30, 2018](#).

2.0 CONSULTANT OBLIGATIONS

2.1 **Use of CDBG Funds.** Consultant hereby agrees to use the CDBG funds provided to Consultant solely for the services pursuant to all of the terms and conditions of this Agreement. The services are more particularly set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Consultant for the services as set forth in the "Budget" attached hereto as Exhibit "B" and incorporated herein by reference. Contract Officer may approve minor changes to the budget that do not exceed the maximum amount in Section 3.1 of this Agreement.

2.2 **Representation and Warranties.** Consultant hereby represents and warrants to City as follows:

a. Consultant has read and is familiar with all of the terms and provisions of the Act and the regulations applicable to Consultant.

b. Consultant is a nonprofit organization permitted to receive CDBG funds under the Act and the Regulations.

c. The services and expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the Regulations.

2.3 **Compliance with Law.** Consultant shall perform all services in accordance with all ordinances, resolutions, statutes, rules, and regulations of City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the Regulations. Particularly, Consultant shall comply with the requirements and standards of the following:

a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;

b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and

c. If Consultant is a religious organization, as defined by the Regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.

2.4 Licenses, Permits, Fees and Assessments. Consultant and its employees, agents, and subcontractors shall obtain and keep in effect at all times, at their sole cost and expense, such licenses, permits and approvals as may be required by law to provide the services required by this Agreement. Consultant and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City.

2.5 Personnel and Participant Conditions.

a. Civil Rights

(1) **Compliance.** Consultant agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

(2) **Nondiscrimination.** Consultant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. Consultant will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(3) **Land Covenants.** This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Consultant shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that City and the United States are beneficiaries of and entitled to enforce such covenants. Consultant, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

(4) **Section 504.** Consultant agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program. City shall provide the Consultant with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

b. Affirmative Action

(1) **EO 11246.** The Consultant, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

(2) Women- and Minority-Owned Businesses (W/MBE). Consultant will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Consultant may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

(3) Access to Records. Consultant shall furnish and cause each of its sub-contractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by City (as grantor of CDBG Funds), HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(4) Notifications. Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by Contract Officer, advising the labor union or worker's representative of Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) EEO/AA Statement. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that it is an Equal Opportunity or Affirmative Action employer.

(6) Subcontract Provisions. Consultant will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each subcontractor or vendor.

c. Employment Restrictions

(1) Prohibited Activity. Consultant is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.

(2) OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

d. "Section 3" Clause

(1) Compliance. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 ("Section 3"), the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon City, Consultant and any sub-contractors. Failure to fulfill these requirements shall subject City, Consultant and any sub-contractors, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. Consultant certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

Consultant further agrees to comply with Section 3 requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent

feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.”

Consultant certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.

(2) **Notifications.** Consultant agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(3) **Subcontracts.** Consultant will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Consultant will not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-contractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance and to satisfy Consultant's obligations hereunder.

(1) **Professional Seal.** Where applicable in the determination of the Contract Officer, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled “Seal and Signature of Registered Professional with Report/Design Responsibility.”

f. **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

g. **Facilities and Equipment.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed hereunder, and only under the terms and conditions set forth herein.

(1) **Facilities and Equipment Provided.** City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

2.6 **Environmental Requirements.**

a. **Lead Based Paint.** In accordance with 24 CFR Part 570.608, Consultant shall be prohibited from using lead-based paint in residential structures rehabilitated with CDBG Funds. Lead-based paint is any paint containing more than five-tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.

b. **Use of Recycled Materials.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent that it is available at equal or less cost than virgin paper.

2.7 **Further Responsibilities of Parties.** Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

3.0 **DISBURSEMENT OF FUNDS**

3.1 **Maximum Amount of CDBG Funds.** City hereby agrees to pay Consultant a sum not to exceed \$193,594.79 in CDBG Funds, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's "Scope of Services" (Exhibit "A") regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payment from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any persons and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

Consultant hereby further acknowledges that the City cannot guarantee that CDBG Funds will be received from HUD. City's obligation to fund the work hereunder is limited to the availability of CDBG Funds from HUD. If CDBG Funds are not forthcoming from HUD for any reason, City shall not have any obligation to fund the work through any other source of funds.

3.2 **Maximum Amount of General Funds.** Not applicable.

3.3 **Termination of Fund Obligation.** The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate Consultant for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to date.

3.4 **Method of Payment- CDBG Funds.** Unless otherwise specified in Exhibit "A", not more frequently than monthly and at least quarterly, Consultant may submit to Contract Officer an invoice, in a form acceptable to City, setting forth the amounts actually expended by Consultant for the services performed and reimbursable costs incurred prior to the invoice date; provided that said expenses are provided for under Exhibit "B" and performance standards have been met under this Agreement. Said invoice shall be accompanied with such additional supporting information as requested by City, including:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A "Task Summary" containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or timesheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expenses accompanied with paid receipts;
- Consultant's signature; and
- Consultant shall give separate notice to City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds eight hundred (800) hours within a twelve (12) month period under this Agreement and any other agreement between Consultant

and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit "A" and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

a. Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed and for authorized reimbursable costs incurred. To the extent that CDBG Funds actually have been received from HUD, City shall pay Consultant for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth (30th) day after the invoice is received.

b. Final Payment. City shall pay the last ten percent (10%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

c. Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such invoice by a properly executed change order or amendment.

d. Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule [insert compensation schedule or reference to it as an Exhibit].

e. Reimbursable Expenses. Reimbursable expenses are specified [reference to section where listed], and shall not exceed Zero Dollars (\$0). Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation under this Agreement and shall not be exceeded.

f. Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

g. Payment upon Termination. In the event the City or Consultant terminates this Agreement pursuant to Section 8.4, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of the written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

h. Authorization to Perform Services. Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from Contract Officer.

3.5 Method of Payment - General Funds (if applicable). City shall pay Consultant an amount not to exceed the total sum noted in Section 3.2 for services to be performed. City shall make monthly payments for services satisfactorily performed. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

3.6 Program Income. Any program income, as such term is defined in the regulations, received by Consultant shall be retained by Consultant. The program income received by Consultant shall solely be used for the provision of services. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Consultant before City is obligated to advance any other CDBG funds to Consultant under this Agreement.

3.7 Separation of Funds. Consultant shall certify that Consultant's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.

3.8 Indirect Costs. If indirect costs are charged, Consultant will develop an indirect cost allocation plan for determining the appropriate City share of administrative costs and shall submit such plan to the City for approval.

4.0 PERFORMANCE SCHEDULE

4.1 **Schedule of Performance.** Consultant shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" (Exhibit "A").

4.2 **Reversion of Assets.** Upon the expiration or sooner termination of this Agreement, Consultant shall (i) transfer to City any and all CDBG Funds and program income on hand, (ii) any accounts receivable attributable to the use of CDBG Funds or program income; and (iii) if any CDBG Funds or program income was used by Consultant to improve or acquire real property and said CDBG Funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Consultant shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this Agreement or (b) dispose of the real property and reimburse City in an amount (together with any amounts previously repaid to City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

5.0 COORDINATION OF WORK

5.1 **Representative of Consultant.** Director for Consultant is hereby designated as being the representative of Consultant authorized to act in its behalf with respect to this Agreement and make all decisions in connection therewith.

5.2 **Contract Officer.** Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be Consultant's responsibility to assure that Contract Officer is kept informed of the progress of the performance of the services and Consultant shall refer any decisions that must be made by City to Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of Contract Officer, who shall have authority to sign all documents on behalf of City required hereunder to carry out the terms of this Agreement.

5.3 **Prohibition Against Subcontracting or Assignment.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City to entering into this Agreement was and is the professional reputation and competence of Consultant. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. Consultant shall also not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of City. In the event of any such unapproved transfer or subcontracting, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

5.4 **Independent Contractor.** Neither City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise of a joint venture or a member of any joint enterprise with Consultant.

5.5 **Conflict of Interest.** Consultant agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Consultant further covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by Consultant hereunder. These conflict of interest provisions apply to any person who is an employee, agent, subrecipient, officer, or elected official or appointed official of City, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.

Consultant may also serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed under this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

5.6 **Lobbying.** The Consultant hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or co-operative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

d. Lobbying Certification (Paragraph d)

"This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

5.7 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

6.0 INSURANCE REQUIREMENTS

6.1 **Insurance.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to City, and that such insurance is in effect prior to beginning work for City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

6.2 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of Contract Officer. The insurer, if insurance is provided, or Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall 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 City.

6.3 Commercial General and Automobile Liability Insurance.

a. General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

b. Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

c. Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

(1) City and its officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or

volunteers.

(2) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(3) An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

(4) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(5) An endorsement shall 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 City.

6.4 Professional Liability Insurance.

a. General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for license professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) covering the license professionals' errors and omissions. Any deductible or self-insured retention shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000) per claim.

b. Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

(1) The retroactive date of the policy must be shown and must be before the date of the Agreement.

(2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

(3) If coverage is cancelled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.

(4) A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

6.5 All Policies Requirements.

a. Acceptability of insurers. All insurance required by this section are to be placed with insurers with a Bests' rating of no less than A:VII.

b. Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If City does not receive the required insurance documents prior to Consultant beginning work, it shall not waive Consultant's obligations to provide them. City reserves the right to not require complete copies of all required insurance policies at any time.

c. Deductibles and Self-Insured Retentions. Consultant shall disclose to an obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, and volunteers; or Consultant shall provide a financial

guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Wasting Policies. No policy required by this section shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

e. Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

f. Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from a subcontractor or vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

6.6 **Remedies**. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy requirements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of premiums for such insurance from any sums due under the Agreement.
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate the Agreement.

7.0 **ADMINISTRATIVE REQUIREMENTS**

7.1 **Financial Management**

a. Accounting Standards. Consultant agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

b. Cost Principles. Consultant shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

7.2 **Documentation and Record-Keeping**

a. Records to be Maintained. Consultant shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- (1) Records providing a full description of each activity undertaken;
- (2) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
- (3) Records required determining the eligibility of activities;
- (4) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- (5) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- (6) Financial records as required by 24 CFR Part 570.502, and Part 84; and

(7) Other records necessary to document compliance with Subpart K of 24 CFR 570.

b. **Retention.** Consultant shall retain all records, including any and all ledges, books of account, invoices, vouchers, cancelled checks, pertinent to charges for services or expenditures incurred and disbursements charges under this Agreement for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment.

c. **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of City. Consultant hereby agrees to deliver those documents to City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

d. **Inspection and Audit of Records.** Any records or documents that Section 7.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

7.3 **Client Data.** Consultant shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

7.4 **Disclosure.** Consultant understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of City's or Consultant's responsibilities with respect to services provided under this Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

7.5 **Property Records.** Consultant shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).

7.6 **National Objectives.** Consultant agrees to maintain documentation that demonstrates that the activities carried out with CDBG Funds provided under this Agreement meet one or more of the CDBG program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

7.7 **Performance Monitoring.** City will monitor the performance of Consultant against goals and performance standards required herein. Substandard performance as determined by City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by Consultant within a reasonable period of time after being notified by City, contract suspension or termination procedures will be initiated.

7.8 **Close-Outs.** Consultant obligation to City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to City), and determining the custodianship of records.

7.9 **Audits and Inspections.** All Consultant records with respect to any matters covered by this agreement shall be made available to City (as grantor agency), their designees or the Federal Government, at any time during normal business hours, as often as City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Consultant within thirty (30) days after receipt by Consultant. Failure of Consultant to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Consultant hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Consultant audits.

8.0 ENFORCEMENT OF AGREEMENT

8.1 **Applicable Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Alameda, State of California, the United States District Court for the Northern District of California, or any other appropriate court in Alameda County, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 **Disputes.** In the event of any dispute arising under this Agreement, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, City may suspend any further payment of CDBG Funds until Consultant is in compliance with this Agreement. Compliance with the provisions of this section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

8.3 **Remedies upon Default by Consultant.** In addition to any other rights or remedies available at law or in equity, if Consultant fails to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.2:

- a. Temporarily withhold payment of CDBG Funds pending correction of the default by Consultant;
- b. Refuse to advance all or any part of the CDBG Funds for the project and reallocate said funds to another activity;
- c. Wholly or partially suspend or terminate the award and this Agreement; and;
- d. Withhold further awards for the project and/or the facility; and
- e. Require Consultant to repay any CDBG Funds that the City determines were not expended in compliance with the requirements of this Agreement, the Act or the regulations.

8.4 **Termination for Convenience.** This Agreement may be terminated for convenience as provided in 24 CFR Section 85.44.

8.5 **Waiver.** No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.6 **Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different

times, of any other rights or remedies for the same default or any other default by the other party.

8.7 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the Agreement.

8.8 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8.9 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.10 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

8.11 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

9.0 CITY OFFICERS AND EMPLOYEES

9.1 Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount that may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Indemnification and Consultant's Responsibilities. Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents, and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively "Liability") of every nature arising out of or in connection with the Consultant's performance of services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

Consultant's obligation to defend and indemnify shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. Consultant must respond within thirty (30) days, to the tender of any claim for defense and indemnity by City, unless this time has been extended by City. If Consultant fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due to Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by City, may be retained by City until disposition has been made of the claim or suit for damages, or until Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against Consultant, Consultant waives any and all rights of any type to express or implied indemnity against the Indemnities.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement

System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

10.0 MISCELLANEOUS PROVISIONS

10.1 **Notice.** Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail at his/her address as follows:

To the City: City of San Leandro
835 E. 14th Street
San Leandro, California 94577
Attention: Deputy Community Development Director

To the Consultant: Rebuilding Together Oakland East Bay
230 Madison Street 1E
Oakland, CA 94607
Attention: Lisa Malul, Executive Director

Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this section.

10.2 **Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

10.3 **Integration; Amendment.** It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement that are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

10.5 **Corporate Authority.** The persons executing this Agreement on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and, (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

10.6 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

CITY OF SAN LEANDRO

CONSULTANT

Chris Zapata, City Manager

Lisa Malul, Executive Director

Date: _____

Date: _____

Attest:

Approve as to Budget:

Tamika Greenwood, City Clerk

David Baum, Finance Director

Date: _____

Approved as to Form:

Account No.: 165-43-232-5120 – Administration
165-43-232-8501 – Rehabilitation Grants

Richard D. Pio Roda, City Attorney

EXHIBIT A

SCOPE OF SERVICES

I. STATEMENT OF PURPOSE

The City desires to provide housing rehabilitation services to eligible residential property owners in San Leandro. This agreement allows the City to make use of professional staff, who have knowledge of construction standards and is familiar with the regulations and requirements of HUD's CDBG Program, to administer a Housing Rehabilitation Program for eligible homeowners who are residents of the City of San Leandro.

II. TERM AND COMMENCEMENT OF WORK

The term of this agreement shall be for the period of May 15, 2017 through June 30, 2018.

III. REHABILITATION PROGRAM

Consultant shall provide general administration of San Leandro Housing Rehabilitation Program.

IV. DESCRIPTION OF SERVICES

A. Consultant shall operate the following rehabilitation programs:

- Minor Home Repair Grant
- Mobile Home Repair Grant
- Exterior Clean-Up Grant
- Exterior Paint Grant
- Accessibility Grant
- Seismic Strengthening Grant

B. Consultant shall meet the following performance goals in the period of May 15, 2017 through June 30, 2018:

- Approve grants to 25 households annually for minor home repair, mobile home repair, exterior clean-up, exterior paint, accessibility, and/or seismic strengthening.

C. Key project administrative services include:

- Homeowner applicants: Ensuring receipt of completed applications, supporting document review and vetting. Providing marketing and outreach.
- Home improvements: Providing inspection services, Scope of Work, Project Closeout, and compliance with city requirements. Ensuring Building permits are pulled and inspections performed as needed. Providing prompt and helpful customer service. Adhering to housing rehabilitation standards. Completing grant underwriting. Monitoring construction progress and ensuring project completion.

- Contractors: Providing skilled inspection services, including preparation of work write-ups, scope of work, and project close-out to ensure compliance with local building and safety codes. Monitoring contractors for compliance with local and State health, safety, and building laws. Maintaining a list of State licensed and certified contractors who have a City business license.
- HUD regulations: Providing experience and knowledge of federal HUD regulations and guidelines, specifically compliance with CDBG regulations.

D. Consultant shall deliver to City within fifteen (15) days after execution of grant documents, copies of homeowners' Project Summary, Certification Letter, and Itemization Statement.

V. CONSTRUCTION POLICIES AND PERMITS

Consultant shall obtain building permits for structural, plumbing, electrical, heating, or any other repairs that require inspection. Work in excess of \$500 shall be performed by licensed contractors. Consultant shall monitor conformance with all state and local laws.

VI. REPORTING AND MISCELLANEOUS

Consultant shall submit the City-provided Quarterly Reports within fifteen (15) days of the end of each quarter. The quarterly and narrative reports shall include, but not be limited to, the following data elements:

- A. Name and address of applicants
- B. Date of application
- C. Date of site visit
- D. Dates of start and completion
- E. Description of work performed
- F. Costs of work performed
- G. Name of contractor
- H. Income and ethnicity of clients
- I. Total number of applications
- J. Total number of units under construction
- K. Total number of units completed or committed
- L. Total costs of projects monthly

To ensure timely expenditure of HUD funds, Consultant shall submit monthly reimbursement claims using the City's invoice or comparable form with documentation of claim including copies of timesheets (denoting specific hours for CDBG work performed, payroll stubs, DE3 or employment or contract letter for personnel costs, invoices or billings).

EXHIBIT B

BUDGET		
Rebuilding Together Oakland East Bay – Housing Rehabilitation Program		
City of San Leandro: CDBG (May 15, 2017 – June 30, 208)		
	FY2016-2017	FY2017-2018
Housing Rehabilitation Grants (25 homeowners annually)	\$84,094.66	\$75,000.00*
Administration Fee	\$ 9,500.13	\$25,000.00
TOTAL BUDGETED	\$93,594.79	\$100,000.00
TOTAL AMOUNT AWARDED	\$93,594.79	\$100,000.00
BALANCE	\$ -	\$ -

* Budget is a projection and is subject to change based on the City of San Leandro CDBG allocation for FY2017-2018.

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