

PROFESSIONAL SERVICES AGREEMENT
Calistoga Affordable Housing, Inc.
for
Housing Related Services

Authorizing Agreement No. 0224

THIS AGREEMENT is entered into as of the 3rd day of April, 2007, by and between the CITY OF CALISTOGA herein called the "City", and CALISTOGA AFFORDABLE HOUSING, INC., herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain housing related services; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than April 5, 2007 and, subject to City Council approval, be completed not later than April 4, 2012. Any changes to these dates must be approved in writing by the City Manager or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall in no event exceed Twenty-Five Thousand Dollars (\$25,000) per fiscal year. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on an equally quarterly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of Twenty-Five Thousand Dollars (\$25,000) in any single fiscal year.

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

6. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

9. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and servants, from and against any and all claims, demands, damages, costs, liabilities or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in section 2778 of the California Civil Code.

10. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

12. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits,

qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

14. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

15. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

16. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 90 days' written notice. Consultant may terminate this Agreement upon 90 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.


24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.


26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

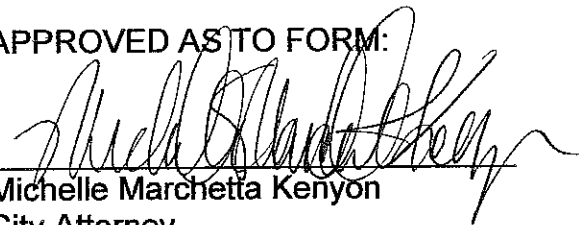
IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
James C. McCann
Title: City Manager

CONSULTANT

By: 
Erica Sklar
Title: Executive Director

APPROVED AS TO FORM:

Michelle Marchetta Kenyon
City Attorney

ATTEST

Susan Sneddon, City Clerk

EXHIBIT A

SCOPE OF WORK

The following represents the scope of work which defines the terms for each task, the delivery schedule of draft documents for City review and processing, and the anticipated completion date (e.g., Planning Commission review and City Council action) that the Planning & Building Director desires immediate assistance in order to fulfill the short-term goals of City Council for affordable housing related projects, as adopted on May 15, 2007.

Priority Specific Tasks to be Completed

1. Preparation of a Local Housing Preference Ordinance that would provide a preference for eligible households that work and/or live in Calistoga to be used for the selection for available affordable rental and for-sale housing in accordance with state and federal fair housing laws.

Draft Ordinance to be delivered to the Planning & Building Director.

Anticipated Project Completion Date: January, 2009

2. Assistance with the development of an Affordable Housing Strategy:

CAH to prepare a general outline of work to be completed and presented to the Planning and Building Director for consent with Planning Commission input. This Work Program shall propose recommended timelines for anticipated completion of each task and the delivery of products to the Planning Director. Such work shall be completed in conjunction with assistance from the Housing Authority of the City of Napa. Proposed tasks shall include, but not limited to the following:

- a. Preparation of a statistically relevant inventory and a survey of existing rental and for-sale affordable and market-rate housing in the City. This task shall also include an evaluation of inventory and survey results to advise and guide policy decisions of the Commission/Council on future preservation and production of affordable housing units.
- b. Assessment and preparation of a review summary on the City's progress on Housing Element's goals, objectives, and implementing actions, as well as recommending priorities with regard to improved Zoning Ordinance regulations and other policies regarding housing.
- c. Collection and evaluation of affordable housing policies, regulations and strategies from like communities. Evaluation to include identification of best management practices and possible

recommended policies, regulations, practices, and strategies for Calistoga consideration.

- d. Assist the Planning & Building Director in conducting a general education session to the Planning Commission and City Council on the City's existing housing program and its effectiveness, proposed recommendations, as well as affordable housing strategies in other communities.
- e. Preparation of any required amendments to the General Plan (e.g., Land Use, Community Character, and/or Housing Elements) and the Zoning Ordinance including, but not limited to, the City's Inclusionary Housing requirements and the fee-in-lieu program (e.g., Chapter 17.08 Affordable Housing of the Zoning Ordinance).

Work Program to be delivered to the Planning & Building Director for presentation to the Planning Commission.

Anticipated Project Completion Date: October, 2008

3. Preparation of a Housing Conversion Ordinance for existing multi-family dwelling units and mobile home parks.

Delivery Schedule: Draft Ordinance to be delivered to the Planning & Building Director.

Anticipated Project Completion Date: April, 2009

4. Recommendations regarding potential modifications to the City's inclusionary Housing Policy.

Anticipated Project Completion Date: December, 2008

General Services to be provided as requested.

1. Assist the Planning & Building Director in reviewing and providing an assessment and any recommendations for action on new state and regional housing policies and programs.
2. Provide development project consultation regarding affordable housing issues.
3. Provide general input on the proposed housing policy recommendations to be included in upcoming Urban Design Plan.
4. Assist the Planning & Building Director in the annual Housing Element review and report to HCD.