CONSENT AGENDA 'd'

CDBG Consulting Contract

ANGELS CAMP
CALIFORNIA

CITY HALL

CITY OF ANGELS PO Box 667, 584 S.Main St., Angels Camp, CA 95222 P: (209) 736-2181 F: (209) 736-0709

For the meeting of: March 15, 2016

TITLE: **Approve Consulting Services Contract for Community Development Grant (CDBG) Program**

BY: **Michael McHatten, City Administrator**

Approved: _____

RECOMMENDATION

Staff recommends the City Council approve a 3-year contract with Cox Consulting for consulting services for administration and implementation of all Community Development Block Grant (CDBG) projects.

DISCUSSION

The City issued a Request for Proposals (RFP) on September 25, 2015 seeking consultants to provide proposals to implement funding grant applications for the CDBG program. In addition to an advertisement published, 27 consultants were solicited via email. By the RFP closing date of October 21, 2015, the City had received only one proposal from Cox Consulting.

The City sent a request into the Department of Housing and Community Development requesting approval of sole source procurement. *'Sole source procurement'* is any contract entered into without a competitive process based on the justification that only one known source exists or that only one supplier can fulfill the requirements requested.

After review, the State approved the City's request and authorized sole source procurement with Cox Consulting. A copy of this letter is attached.

FINANCIAL IMPACT

See Exhibit 'B' in attached contract.

Mayor Wes Kulm • Vice Mayor Amanda Folendorf • Council Members Elaine Morris, Lambert Sobon, Scott Behiel
City Administrator Michael McHatten • City Attorney Derek Cole, Cota Cole, LLP

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY EDMUND G. BROWN JR., *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE
Contract Management Section
2020 W. El Camino Avenue, Suite 650, 95833
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 263-2771 / FAX (916) 263-2763
www.hcd.ca.gov

March 1, 2016

Mr. Michael McHatten
City Administrator
City of Angels
PO Box 667
Angels Camp, CA 95222

SUBJECT: Standard Agreement 13-CDBG-8948
Sole Source Procurement Approval
(03F) Supplemental Activity Parks and Recreational Facilities

Dear Mr. Michael McHatten:

The Department of Housing and Community Development (Department) is in receipt of the City of Angel's (City) request for approval of Sole Source Procurement for the Supplemental Activity Parks and Recreational Facilities, contained in Grant 13-CDBG-8948.

Based on the information provided the City undertook a reasonable effort to outreach to potential consultants; however, received only one bid from Cox Consulting.

After the reviewing the documents submitted, the Sole Source request is approved as of date of this letter. The City may enter into a contract with Cox Consulting.

Please submit a copy of the executed contract to the Department for our records.

If you have any questions, please contact Max Emami, Contract Management Representative, at (916) 263-1679 or via email at max.emami@hcd.ca.gov.

Sincerely,

Janet Haynes
Contract Management Manager

RECEIVED
MAR - 4 2016
CITY OF ANGELS

CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF ANGELS AND COX CONSULTING

THIS AGREEMENT for Consultant services is made by and between the City of Angels, a California municipal corporation ("City"), and Cox Consulting ("Consultant") as of the ___ of March 2016.

Section 1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 **Term of Services.** The term of this Agreement shall be three years beginning on the date first noted above and ending on _____. Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

1.3 **Assignment of Personnel.** Consultant shall assign staff described in the Proposal to the City Angels dated October 21, 2015 supplemented by 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.

1.4 **Time.** 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 provided in Section 1.2 above and to satisfy Consultant's obligations hereunder.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant in accordance with Exhibit B, Budget, 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 cost proposal, hereby incorporated by reference, 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 payments 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, 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 pensions 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.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed incurred prior to the invoice date. Invoices shall contain the following information:

- 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;
- The Consultant's signature.

2.2 **Invoice Payment.** City shall make payments, based on invoices received, for tasks satisfactorily completed. City shall have forty-five (45) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 **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 an invoice by a properly executed change order or amendment.

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

2.5 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

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

Section 3. **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.

Section 4. **INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure insurance specified in Exhibit E.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

5.1 **General Requirement.** Consultant shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.2 **PERS Indemnification.** 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.

Section 6. **STATUS OF CONSULTANT.**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control

Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Consultant shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Consultant are employees and agents of Consultant and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Consultant shall not allow any employee to become eligible for a claim for PERS benefits.

6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are

legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** 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 for entering into this Agreement was and is the Consultant reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall 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 the Contract Administrator.

8.5 **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.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different Consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **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 the City. Consultant hereby agrees to deliver those documents to the 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 the 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.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of five (5) years from HUD closeout of Community Development Block Grant #_____, or for any longer period required by law.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 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 the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), 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 the City, for a period of five (5) years from HUD closeout any Community Development Block Grants included under this contract.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **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.

10.5 **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.

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

10.7 **Conflict of Interest.** Consultant may 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 Sections 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 the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve 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 Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 **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.

10.9 **Contract Administration.** This Agreement shall be administered by Michael McHatten, City Administrator ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Cox Consulting
PO Box 3093
Sonora, Ca 95370

Any written notice to City shall be sent to:

Michael McHatten, City Administrator
City of Angels
PO Box 667
Angels, CA 95222

10.11 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the compensation schedule attached hereto and incorporated herein as Exhibit B, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.12 **IRS Form W-9.** Consultant shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

Section 11 COMMUNITY DEVELOPMENT BLOCK GRANT PROVISIONS

11.1 The City will monitor the Consultant for conformance with this Agreement.

11.2 The Consultant will comply with all CDBG provisions included in Exhibit D as well as the provisions listed below.

11.2.1 Consultant shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until five (5) years after the final payments under this Contract are made to Consultant, or the resolution of any audits or lawsuits, whichever is later.

11.2.2 Consultant will perform the work in accordance with the State grant agreement and all applicable Federal, State and local housing and building codes, such as environmental, building, planning, zoning, health and safety, relocation, labor, fair employment, and historic preservation.

11.2.3 Where applicable, Consultant will maintain at least the minimum State required worker's compensation insurance for those employees who will perform all or any part of the CDBG funded work.

11.2.4 Consultant will maintain, if legally required, liability, unemployment insurance, disability insurance reasonable to compensate for injuries or damages related to the activities of this Contract.

11.2.5 Consultant will allow the Department of Housing and Community Development, HUD or other State or Federal agencies to access all relevant records for grant monitoring or auditing purposes.

11.2.6 If applicable, Consultant will comply with all CDBG requirements regarding copyrights, patents and rights in data.

11.2.7 Comply with the Child Support Compliance Act (Chapter 8 commencing with Section 5200 of Part 5 of division 9 of the Family Code).

11.2.8 Complete the Anti-Lobbying certificate as Exhibit C.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF ANGELS	CONSULTANT
_____	_____
Michael McHatten, City Administrator	**Terry Cox, Cox Consulting**

Date: _____

Date: _____

Attest:

_____

Mary Kelly, City Clerk

Date: _____

Approved as to Form:

_____

Derek Cole, City Attorney

Date: _____

Exhibit A

SCOPE OF WORK

General Administration

1. Prepare notification for and conduct all required public meetings and hearings.

2. Prepare funding applications for Community Development Block Grants, as requested by the City.

3. Complete all contract special conditions including environmental review, anti-displacement and relocation assistance plan, program income reuse plan, etc.

4. Prepare program guidelines.

5. Conduct any necessary procurement for subcontractors, as requested, including preparation of Requests for Proposals/Qualifications, solicitation of qualified bidders, advertisements, etc.

6. Assist in the preparation of contracts, as requested, for subcontractors and sub-recipients.

7. Complete all program reporting to the State Department of Housing and Community Development (HCD).

8. Maintain all program fiscal records including preparation of Cash Requests, monitoring payments to subcontractors, and coordination with City Administrator.

9. Supervise loan packagers for housing or small business loan programs.

10. Prepare Public Information file.

11. Act as principal liaison with the State Department of Housing and Community Development.

12. Schedule, notice and conduct meetings of housing and small business loan committees and technical advisory groups as necessary.

13. Oversee program Equal Opportunity compliance including referrals for housing discrimination complaints, including preparation of necessary language regarding equal opportunity, Section 3, Section 504, etc. in advertisements, bid packages and contracts.

14. Oversee screening of program applicants for income eligibility.

15. Prepare program records for monitoring by State representatives, conduct site visits, respond to comments and correct any findings required by HCD.

16. Attend any CDBG related trainings or informational meetings conducted by HCD.

Program Implementation

1. As necessary, oversee relocation, property acquisition, lead based paint noticing/abatement.

2. Public Improvements/Public Facilities: As necessary for construction projects, oversee Labor Standards compliance including preparation of notices, bid documents, review of weekly certified payrolls, employee interviews, verification of contractor licensing and debarred status, review bonding, conduct pre-construction conference, issue notice of award, notice to proceed, oversee payments to contractors, approval of change orders, notice of completion etc.

3. Enterprise Fund/Micro-enterprise/OTC: As necessary for economic development projects, market loan program, prepare business loan packages and present to loan committee, prepare loan documents, complete closing. Track lower income group hiring by businesses and compliance with loan agreement. Manage loan portfolio including periodic reporting, UCC-1 filings, maintenance of insurance, etc.

4. Housing Rehabilitation: As necessary for housing rehabilitation projects, conduct outreach, income screening, mortgage verification, bid process, loan closing, oversee construction, implement rental agreements. Prepare notices, bid documents, verify contractor licensing and debarred status, review bonding, conduct pre-construction conference, issue notice of award, notice to proceed, oversee payments to contractors, approval of change orders, notice of completion etc.

5. First Time Homebuyer: As necessary for first time home buyer projects, conduct outreach, income screening, mortgage verification, loan closing, monitoring

Schedule for Performance

Consultant must meet all administrative milestones set forth in any State CDBG contract made a part of this agreement.

EXHIBIT "B"

BUDGET

A. Administration for General Allocation or Economic Development projects up to $400,000
$30,000, flat fee

B. Administration for projects larger than $400,000-
6.5%, flat fee

C. Administration for Technical Assistance Grants $5000 flat fee

D. An administrative fee of 6.5% flat fee will apply to additional activities funded through Program Income Reuse Funds.

E. Construction activities will include labor standards compliance/activity delivery fee of $15,000-$20,000 flat fee, dependent on project size and complexity.

F. Housing Activities

Implementation Housing Rehabilitation	18% flat fee
Implementation Homebuyer Assistance	7% flat fee

G. Application preparation

One Activity	$3,500
Additional Activities	$1,500 each
Over-the Counter application (should be charged to borrower)	$7,500

H. Other Activities $85/hr.

Cox Consulting's hourly rate is $85
Adams Ashby principal's hourly rate is $85
Adams Ashby inspector's hourly rate is $75

I. Administration for #13-CDBG-8948-Tuorism & Business Expansion study

$5,000 flat fee

J. Parks Supplemental Project

Administration	$9,000 flat fee
Labor Standards	$3,000 flat fee

Exhibit "C"

ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge or belief, 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, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative 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.

_____ _____

Signature Date

EXHIBIT D

CDBG TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department.

A. The Grantee cannot incur any costs until the execution of the contract unless prior written approval has been given by CDBG management.

B. For certain activities, the Grantee must receive the Authority to Use Grant Funds from the Department prior to the commitment and/or commencement of Work.

C. A Grantee cannot be reimbursed for any costs until the Department has issued written clearance of all general conditions requirements.

2. Sufficiency of Funds and Termination

A. The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days written notice to the Grantee. Cause shall consist of violations of any terms and/or special conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

B. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if this Agreement were executed after the determination was made.

C. This Agreement is valid and enforceable only if sufficient current funds are made available to the Department by the United States Government for the Federal Fiscal Year. In addition, this Agreement is subject to any additional restrictions, limitations, conditions or statute enacted by the Congress or State Legislature, which may affect the provisions, terms or funding of this Agreement in any manner.

D. If Congress does not appropriate sufficient funds for the program, the Department may amend this Agreement to reflect any reduction in funds, or it may terminate this Agreement by giving fourteen (14) days written notice to the Grantee.

3. Termination for Convenience and Enforcement

A. Except as provided in 24 CFR 85.43, awards may be terminated in whole or in part only as follows:

1) The Department with the consent of the Grantee or Subgrantee in which case the two parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

2) By the Grantee or Subgrantee upon written notification to the Department, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the Department determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either 24 CFR 85.43 or paragraph (A) of this Section.

B. Enforcement for noncompliance may include the following remedies if a Grantee or Subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances.

1) Temporarily withhold cash payments pending correction of the deficiency by the Grantee or Subgrantee or more severe enforcement action by the awarding agency.

2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

3) Wholly or partly suspend or terminate the current award for the Grantee's or Subgrantee's program.

4) Withhold further awards for the program.

5) Take other remedies that may be legally available.

a. Hearings, appeals. In taking an enforcement action, the awarding agency will provide the Grantee or Subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the Grantee or Subgrantee is entitled under any statute or regulation applicable to the action involved.

b. Effects of suspension and termination. Costs of Grantee or Subgrantee resulting from obligations incurred by the Grantee or Subgrantee during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee or Subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if:

1. The costs resulting from obligations which were properly incurred by the Grantee or Subgrantee before the effective date of suspension or termination, are not in anticipation of suspension or termination; and, in the case of a termination, are noncancellable, and,

2. The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the

termination takes place.

c. Relationship to debarment and suspension. The enforcement remedies identified in this Section, including suspension and termination, do not preclude a Grantee or Subgrantee from being subject to 2 CFR part 2424. CDBG funds may not be provided to excluded or disqualified persons per 24 CFR 570.489(i).

4. Litigation

A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.

B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

5. National Objectives

All grant activities performed under this Agreement must be eligible and must meet one of the National Objectives of the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974 Section 104(b)(3), as amended and 24 CFR Part 570.483.

A. Primarily Benefits HUD defined low- or moderate-income person(s) (LMI) or household(s) (LMH). The term low- or moderate-income limits are defined as being no more than 80% of the median area income, annually determined by HUD, per 24 CFR, Part 570.483(b); and/or,

B. Elimination of Slums or Blight (on a spot or area basis) is an eligible CDBG National Objective. Slums and Blight's definition is found in 24 CFR, Part 570.483(c). The use of Slums or Blight requires prior Departmental written approval.

C. Meeting an Urgent Need is an eligible CDBG National Objective under 24 CFR, Part 570.483(d). This National Objective can only be used after formal release of public notice from the Department announcing the disaster event and requesting grantees impacted by the disaster to submit proposals by grantees describing how this National Objective is being met by eligible activities under this Agreement.

6. Public Benefit for Special ED

Per 24 CFR 482(f) and (g), the Grantee is responsible to demonstrate fulfillment of the Public Benefit requirement for all CDBG ED activities that involve assistance to for-profit businesses under Section 105(a)(14)-(17) of The Act. These ED activities must also comply with CDBG's six (6) underwriting standards, per 24 CFR, Part 570.482 (e).

7. Waivers

No waiver or any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Grantee of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

8. Uniform Administrative Requirements

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines and requirements of 24 CFR part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128 (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at Section 570.502.

9. Non-Performance

In the event that the National Objective and/or Public Benefit requirements are not met, the Department may, in its sole discretion, impose any or all of the following remedies: recapture of part or all of any PI; reimbursement of part or all of the grant amount; and/or exclusion of the Grantee from further CDBG funding for a period of time to be determined by the Department.

Prior to closing out this Agreement, the Department shall review the actual National Objective and/or Public Benefit achievements of the Grantee.

10. Affirmatively Furthering Fair Housing

The Grantee will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

11. Equal Opportunity Requirements and Responsibilities

A. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.

B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.

C. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.

D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.

E. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for person's age 55 or older.

F. **The Housing for Older Persons Act of 1995 (HOPA)**: Retained the requirement that housing facilities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.

G. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.

H **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

I. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

J. **Executive Order 11063**: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

K. **Executive Order 11259**: This Executive Order provides that the administration of all

federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.

L. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.

M. **The Immigration Reform and Control Act (IRCA) of 1986**: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).

N. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.

O. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

P. **Executive Order 11246**: This Executive Order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

12. The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance (Section 3):

The Grantee will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing per 24 CFR, Part 135. The responsibilities of the Grantees are outlined in 24 CFR Part 135.32 as follows:

A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.

B. Notifying potential contractors for Section 3 covered projects of the requirements of this Part, and incorporating the Section 3 clause set forth in Section 135.38 in all solicitations and contracts.

C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the Appendix to this Part, as appropriate, to reach the goals set forth in Section 135.30.

Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in Section 135.30.

D. Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this Part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR Part 135.

E. Documenting actions taken to comply with the requirements of this Part, the results of those actions taken and impediments, if any.

F. A Grantee which distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in Section 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at Section 135.30. The State must inform units of local government to whom funds are distributed of the requirements of this Part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this Part.

13. Environmental Compliance

The Grantee shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Grantee. The level of compliance varies by activity. NEPA review must be completed by the Grantee for each activity and approved in writing by Department staff prior to incurring costs for the grant activity(ies).

14. Clean Air and Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended from time to time.

15. Relocation, Displacement, and Acquisition

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 shall be followed where any assistance is carried out by the Grantee and assisted in whole or in part by funds allocated by CDBG. For projects where there will be temporary or permanent displacement, the Grantee must submit signed General Information Notices from each tenant who was residing in the project at the time of Application submittal.

16. Compliance with State and Federal Laws and Regulations

A. The Grantee agrees to comply with all State laws and regulations that pertain to

construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Grantee, its Subgrantees, contractors or subcontractors, and the grant activity, as well as any other State provisions as set forth in Exhibit C.

B. The Grantee agrees to comply with all federal laws and regulations applicable to the CDBG Program and grant activity(ies), and with any other federal provisions as set forth.

17. Federal Labor Standards Provisions

A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over $2,000.

B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) The Act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The Act also provides that the inclusion of kickback amounts in contract prices are prohibited conduct in itself. This Act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.

C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that worker receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5) are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

18. Prevailing Wages

A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 1720-1743] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Grantee and a licensed building contractor, the Grantee

shall serve as the "awarding body" as that term is defined in the LC. Where the Grantee will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

19. Lead Based Paint Hazards

Activity(ies) performed with assistance provided under this Agreement are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR, Part 35 (Lead Disclosure). Any grants or loans made by the Grantee with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these Regulations. The Grantee shall be responsible for the notifications, inspections, and clearance certifications required under these Regulations.

20. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for one (1) year thereafter. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

21. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the

22. Anti-Job Pirating Certification

Pursuant to 24 CFR 570.482(h) CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area to another labor market area if the relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant.

23. Anti-Lobbying Certification

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity(ies) and that all subrecipients shall certify and disclose accordingly. 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 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and no more than $100,000 for such failure.

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 cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federally 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.

24. Bonus or Commission, Prohibition Against Payments of

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

A. Obtaining the Department's approval of the Application for such assistance; or,

B. The Department's approval of the Application for additional assistance; or,

C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

25. Contractors and Subrecipients

A The Grantee shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

1) Contractors are defined as program operators or construction contractors who are procured competitively.

2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded jurisdiction to undertake eligible activities.

B. An agreement between the Grantee and any contractor or subrecipient shall require:

1) Compliance with the applicable State and Federal requirements described in this Agreement, which pertain to, among other things, labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.

2) Maintenance of at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the grant activity(ies) or any part of it.

3) Maintenance, if so required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.

C. Contractors shall:

1) Perform the grant activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.

2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.

D. Subrecipients shall:

1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a minimum period of five (5) years after the Department notifies the Grantee that the HUD/HCD contract has been closed.

2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

E. Contractors and Subrecipients: Drug-Free Workplace Act of 1988

All organizations covered by the Drug-Free Workplace Act of 1988 are required to provide a drug-free workplace by taking the following steps:

1) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.

2) Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.

3) Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within (5) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.

4) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.

5) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.

6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

26. Insurance

The Grantee shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Grantee and the Department to be necessary for specific components of the grant activity(ies) described in Exhibit A.

27. Periodic Reporting Requirements

During the term of this Agreement, the Grantee must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Grantee's performance under this Agreement will be based in part on whether it has submitted the reports on a timely basis.

A. Semi-Annual PI Report: Submit by January 31 and July 31.

B Annual Performance Report (APR): Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

C. Annual Section 3 Reports: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

D. Annual Minority Owned Business/Women Owned Business (MBE/WBE) Report: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

E. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be

submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.

The Department reserves the right to request any other reports that may be necessary for the implementation of this Agreement.

28. Monitoring Requirements

The Department shall perform a program and/or fiscal monitoring of the grant. The Grantee shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Grantee's performance score on future applications.

In determining appropriate monitoring for each grant, the Department shall consider prior grant administration, audit findings, as well as factors such as complexity of the project and the amount of funding. The Department shall determine the areas to be monitored, the number of monitoring visits, and their frequency. The monitoring will address program compliance with contract provisions, including to but not limited to national objective, financial management, the requirements of HCDA. 24 CFR Part 85, 24 CFR 570 Part I, and all applicable federal overlay requirements.

29. Inspections of Grant Activity

The Department reserves the right to inspect any grant activity(ies) performed hereunder to verify that the grant activity(ies) is being and/or has been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.

A. The Grantee shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure that the grant activity(ies) is being and/or has been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.

B. The Grantee agrees to require that all grant activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor, subcontractor, or sub-recipient, respectively, until it is so corrected.

30. Access

Access by the Grantee, the Subgrantee, the federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions pursuant to 24 CFR 85.36(i)(10).

31. Audit/Retention and Inspection of Records

A. The Grantee must have intact, auditable fiscal and program records at all times. If the Grantee is found to have missing audit reports from the California State Controller's

Office (SCO) during the term of this Agreement, the Grantee will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Grantee will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Grantee's audit completion plan is subject to prior review and approval by the Department.

B. The Grantee agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Grantee agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Grantee further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Grantee that the HUD/HCD contract has been closed. The Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.

C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Grantee. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant activity(ies).

D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowance of any expenditure shall be final.

E. For the purposes of annual audits under OMB Circular A-133, Grantee shall use the Federal Catalog number 14.228 for the State CDBG Program.

F. Pursuant to OMB Circular A-133, the Grantee shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are general administration expenses and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-related portion of the audit may be charged to the Program in accordance with Public Law 98-502, OMB Circular A-133, and Section 7122 of Title 25 CCR.

G. Notwithstanding the foregoing, the Department will not reimburse the Grantee for any audit cost incurred after the expenditure deadline of this Agreement.

1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.

2) If there are audit findings, the Grantee must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department

will notify the Grantee in writing. If the Department is not in agreement, the Grantee will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.

3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.

4) If so directed by the Department upon termination of this Agreement, the Grantee shall cause all records, accounts, documentation and all other materials relevant to the grant activity(ies) to be delivered to the Department as depository.

32. Signs

If the Grantee places signs stating that the activity is funded with private or public dollars and the Department is also providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the project that the Department is a source of financing through the CDBG Program.

33. Citizen Participation

The Grantee is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

34. Flood Disaster Protection

A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3(a) of said Act, for use in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said Act.

B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.

C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by FEMA as having special flood areas and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.

D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be

required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

35. Procurement

The Grantee shall comply with the procurement provisions in 24 CFR, Part 85.36, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

36. Program Income

PI means gross income earned by the Grantee from grant-funded activities and is subject to CDBG regulatory requirements pursuant to 24 CFR, Part 570.489(e) - Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 85 - Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as applicable. These regulations include the requirement that the Grantee record receipt and expenditure of PI as part of the financial transactions of the grant activity(ies). Grantees are also subject to all provisions in Exhibit A, Item 6.

37. PI Reuse Agreement

The Grantee must adopt and submit the most current Reuse Agreement provided by the Department. The Reuse Agreement is not in effect until it has been executed by the Department.

38. Obligations of Grantee with Respect to Certain Third Party Relationships

The Grantee shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the program with respect to which assistance is being provided under this Agreement to the Grantee. The Grantee shall comply with all lawful requirements of the Department necessary to ensure that the Program, with respect to which assistance is being provided under this Agreement to the Grantee, is carried out in accordance with the Department's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)].

39. Energy Policy and Conservation Act

This Agreement is subject to mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

INSURANCE REQUIREMENTS FOR CONSULTANTS

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

Minimum Scope of Insurance

Coverage should be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (occurrence form CG 00 01 11 88).
2. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance as may be appropriate to consultant's profession.
   Architects' and engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: $1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.