

RESOLUTION NO. 2016-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AN AGREEMENT WITH R.L. HASTINGS & ASSOCIATES, LLC, OF PLACERVILLE, CALIFORNIA IN THE AMOUNT OF FOUR THOUSAND DOLLARS (\$4,000) FOR ADMINISTRATIVE SUBCONTRACTOR SERVICES TO PERFORM REQUIRED MONITORING OF PROJECT FOR COMPLIANCE WITH REQUIREMENTS OF THE HOME PROGRAM TO SUPPORT THE ROCKROSE GARDENS PROJECT, AND AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, the City of Marina began working with Interim Inc. with the goal of developing an affordable housing project at 3012-3022 Lexington Court project in March 2010 and at a regular meeting of October 5, 2010, the former Redevelopment Agency of the City of Marina adopted Resolution No. 2010-30 (MRA), which approved entering into an Exclusive Negotiating Agreement for the project to facilitate the development of twenty-one (21) units of permanent, supportive housing for very low income persons with mental disabilities, and;

WHEREAS, at the regular meeting of January 20, 1998, the City executed Grant Agreement 97-HOME-0266 with the State Department of Housing and Community Development (HCD) for a First-Time Homebuyer down payment assistance program and the U.S. Department of Housing and Urban Development (HUD) provided funding through the HOME Investment Partnerships Program (HOME), and;

WHEREAS, at the regular meeting of January 25, 2011, the former Marina Redevelopment Agency Board adopted Resolution No. 2011-02 (MRA) approving a Development and Disposition Agreement (DDA) with Interim Inc. for the property, which was executed on January 31, 2011. The City had collaborated with Interim to secure \$5.5 million funding required to construct the project, from a range of funding sources, and;

WHEREAS, the grant expired June 25, 2011 with a balance of \$386,873 of Program Income. City staff consulted with HCD staff about the potential for the City to retain the Program Income (PI) funds for HOME-eligible activities in Marina rather than returning the unexpended funds to HCD in a grant close-out process, and;

WHEREAS, in July 2012, HCD staff notified the City that they had amended the 1997 Grant Agreement that would enable the City to retain and redirect use of the funds for HOME-eligible activities, and;

WHEREAS, at a regular meeting of December 4, 2012, the City Council adopted Resolution No. 2012-180 approving a regulatory agreement, loan agreement, deed of trust and note with Interim Inc./Rockrose Housing Corporation to secure the loan of funds in the amount of \$361,873 for the Rockrose Gardens housing project in accordance with the regulations of HCD/HOME, and;

WHEREAS, at the regular meeting of March 5, 2013, the City Council adopted Resolution No. 2013-27 to retain R. L. Hastings & Associates, LLC to provide administrative subcontractor activities related to set up, construction monitoring and completion of related documents in accordance with the regulations of HCD/HOME requirements, and;

WHEREAS, on September 10, 2015, documents were prepared and forwarded to HCD/HOME in connection with completion of construction on the Rockrose Gardens project, and;

WHEREAS, HCD/HUD mandates that the City of Marina conduct annual long-term monitoring of the Rockrose Project for the next 55 years. The scope of the monitoring is defined in the Agreement ("**EXHIBIT A**") between City of Marina and R.L. Hastings, LLC. The term of the contract will be January 20, 2016 to January 20, 2017. The intent of the contract is to complete the first year reporting using R. L. Hastings & Associates and guide city staff on all phases of the mandated monitoring, which would allow subsequent year reporting to be accomplished in-house. The fee for service for R.L. Hastings & Associates, LLC is Four Thousand (\$4,000) for a one year contract.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve an Agreement (Exhibit A) with R.L. Hastings & Associates, LLC of Placerville, California in the amount of four thousand dollars (\$4,000) for Administrative Subcontractor Services to perform required monitoring of project for compliance with requirements of the HOME Program to support the Rockrose Gardens Project, and;
2. Authorize City Manager to execute agreement on behalf of City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED, by the City Council at a regular meeting duly held on the 20th day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT "A"

AGREEMENT BY & BETWEEN
CITY OF MARINA
AND
R.L. HASTINGS & ASSOCIATES, LLC
FOR ADMINISTRATIVE SUBCONTRACTOR SERVICES
TO PERFORM REQUIRED MONITORING OF PROJECT

(This Project is in connection with Standard Agreement: 2013 PI Project)

THIS AGREEMENT, entered into this 20th day of January 2016 by and between the City of Marina hereinafter referred to as "CITY," and R.L. Hastings & Associates, LLC, hereinafter referred to as "CONSULTANT."

WHEREAS, the CITY desires to engage CONSULTANT to perform Long-Term Monitoring services on behalf of the CITY for the annual monitoring of the City's 2013 HDC/HOME grant, and

WHEREAS, the CONSULTANT is qualified and experienced to provide such consulting services; and

NOW, THEREFORE, said CITY and said CONSULTANT, for the considerations hereinafter and set forth, mutually agree as follows:

ARTICLE 1 CONSULTANT Responsibilities is to complete documents and instruct city staff on each phase of monitoring along with compliance reporting including the following:

- A. CONSULTANT shall prepare "Notification of Site Visit" letter and supply to the project's management company to notify tenants of pending site visit and random unit inspections;
- B. CONSULTANT shall inspect, along with city staff, the project exterior, grounds, and public areas and prepare with city staff the "Physical Condition Report" and other required forms;
- C. CONSULTANT shall conduct unit inspections with city staff on required number of HOME units and complete the HOME "Unit Inspection" checklist or the "HUD Unit Inspection Checklist," whichever is required per the City Monitoring Policies and Procedures;
- D. CONSULTANT shall conduct tenant file reviews with city staff on required number of HOME unit files for compliance with the project's Regulatory Agreement and Uniform Multifamily Regulations;
- E. CONSULTANT shall review the Fiscal Responsibility of the project's management and train staff as necessary to improve performance towards meeting goals;

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- F. CONSULTANT shall review and analyze the “Annual Affirmative Marketing Report” and train staff, if necessary, on how to improve performance towards goals;
- G. CONSULTANT shall prepare along with city staff the “Annual Monitoring Report”;
- H. CONSULTANT shall review along with city staff the “Annual Project Compliance Report”;
- I. CONSULTANT shall prepare along with city staff the “Monitoring Summary Letter” outlining all Findings and Concerns;
- J. CONSULTANT shall prepare a “Monitoring Clearance Letter” when all Findings and Concerns have been addressed appropriately;
- K. CONSULTANT shall submit all required documents to the State HOME Program and copy to City;
- L. CONSULTANT shall perform other tasks addressed in the informal request for quotes.

ARTICLE 2 Term

This AGREEMENT shall commence on the 20th day of January 2016. The CITY or CONSULTANT may terminate this AGREEMENT at any time for good cause, by giving at least thirty (30) days’ written notice. Good cause shall consist of violations of this AGREEMENT. If contract is terminated, CONSULTANT shall be compensated for work performed up to the date of termination. CITY and CONSULTANT agree that time is of the essence for CONSULTANT performance of responsibilities enumerated in Article 1.

The Term of this AGREEMENT is for one year, commencing January 20, 2016 to conduct the first annual long-term monitoring activities and ending on January 20, 2017.

ARTICLE 3 Compensation and Method of Payment

CITY will pay CONSULTANT the lump sum amount not to exceed \$4,000 in the following manner:

- A. CONSULTANT will submit a request for payment after completion of the following milestones:
 - \$90% of contract amount (\$3,600) payable upon issuance of the Summary Letter containing any Findings and Concerns for the project;
 - \$10% of contract amount (\$400) upon receipt of State HOME Program Clearance.
- B. The CITY will process the request for payment within 30 days after receipt of CONSULTANT’s invoice.

ARTICLE 4 **Amendments**

This AGREEMENT may be amended by a written amendment executed by both parties.

ARTICLE 5 **Status of Relationship**

It is the intent of the parties that under this AGREEMENT, CONSULTANT shall be an independent contractor, and not an employee of the CITY. This agreement excludes absolutely any employee-employer relationship between CONSULTANT and CITY. CITY will not provide workmen's compensation insurance, nor pay for other disability compensation. CONSULTANT will be fully responsible for payment federal and state income taxes, social security, and any other payroll tax obligations that CONSULTANT may owe as a result of compensation received under this AGREEMENT.

CONSULTANT shall maintain insurance for the duration of the contract. CONSULTANT shall, at its own expense, comply with CITY insurance and liability requirements included as "Attachment B" to this AGREEMENT. Due to the nature of work involved with this project, CONSULTANT shall not be obligated to maintain Errors and Omissions Liability coverage. CONSULTANT shall furnish a certificate of insurance to CITY

The CITY reserves the right to inspect or audit work being performed by CONSULTANT, after providing CONSULTANT with a written notice at least two (2) business days before any intended inspection or audit. Work being defined as the duties listed in ARTICLE 1.

ARTICLE 6 **Affirmative Action**

In rendering the services contemplated by this AGREEMENT with the CITY, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, or national origin. CONSULTANT shall also comply with Title IV of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

Furthermore:

- A. CONSULTANT shall take affirmative action to insure that job applicants are employed and that employees are treated during employment without regard to race, religion, sex, color, age, national origin, or physical handicap. The term "affirmative action" shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. CONSULTANT agrees to post such notices, to be provided, setting forth the provisions of this equal employment opportunity and affirmative action program.

- C. CONSULTANT shall in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT state that all qualified applicants will receive consideration to employment without regard to race, religion, sex, color, age, national origin, or physical handicap. Notification that CONSULTANT is an “Equal Opportunity Employer” or “EOE” constitutes satisfaction of this notice requirement.

ARTICLE 7 **Fair Employment Practices**

CONSULTANT will permit access to records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices Commission, or any other agency of the State of California designated by awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices Provision. In the event of any violations by the CONSULTANT of state fair employment laws, the State of California shall have the right to terminate this AGREEMENT either in whole or in part. In the event of such termination, any loss or damage sustained by the State of California and/or CITY in securing the goods or services hereunder shall be borne and paid for by the CONSULTANT and by their surety under performance bond, if any, and, in addition to other remedies, the State of California and the CITY may deduct from any monies due or that thereafter become due to the CONSULTANT the difference between the price named in the particular agreements and the actual cost thereof to the State of California and the CITY.

ARTICLE 8 **Compliance with Labor Code of State of California**

Pursuant to the provisions of Section 3700 of the Labor Code, CONSULTANT will require every employer to be insured against liability for workmen’s compensation, or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the work of a particular agreement. Furthermore, CONSULTANT shall also provide evidence of workmen’s compensation insurance, unemployment insurance, and disability insurance to cover all of CONSULTANT’s employees.

ARTICLE 9 **The Civil Rights Act, HCD, Age Discrimination, and Rehabilitation Acts Assurance**

During the performance of this contract the CONSULTANT assures that no otherwise qualified person shall be excluded from the participation or employment, denied program benefits, or be subject to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this AGREEMENT, as required by Title VI of the Civil Rights Act of 1964; Title I, of the Housing and Community Development Act of 1974, as amended; the Age Discrimination Act of 1975; the Rehabilitation Act of 1973; and all implementing programs.

ARTICLE 10 **The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance**

- A. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701 u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- B. The parties to this AGREEMENT will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this AGREEMENT. The parties to this AGREEMENT certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. The CONSULTANT will send to each labor organization or representative of workers with which there is a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or workmen's representative of the commitment under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The CONSULTANT will include this Section 3 Clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon finding the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractor or subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

ARTICLE 11 **State Non-Discrimination Clause**

- A. During the performance of this AGREEMENT, CONSULTANT and its subcontractors shall not lawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical

- handicap, medical condition, marital status, age (over 40), or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) And the applicable regulations promulgated thereunder (California Administrative Code Section 12990), set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. This AGREEMENT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

ARTICLE 12 Indemnity and Liability

CITY shall not be liable for any damage or injuries caused, nor the cost or expense incurred, by CONSULTANT in the performance of any of the CONSULTANT's duties under this AGREEMENT. If a claim or lawsuit is brought against the CITY for any damages or injuries caused, or costs and expenses incurred, by CONSULTANT, then CONSULTANT shall defend against and indemnify CITY for any such claim or lawsuit. Furthermore, the CITY is not liable or responsible for any damages or injuries caused to, nor costs or expenses charged to, the CONSULTANT as a result of CONSULTANT's performance of the duties under this AGREEMENT.

ARTICLE 13 Entire Agreement

This AGREEMENT supersedes any and all other agreements, either written or oral, between the parties hereto with respect to the subject matter hereof, and no other agreement, or promises relating to the subject matter of this AGREEMENT which is not contained herein, shall be valid or binding.

Provided, however, the parties may later enter into written modifications or amendments to this AGREEMENT, signed and dated by both parties.

**CONSULTANT SERVICES
HOME LONG-TERM MONITORING**

IN WITNESS WHEREOF, the parties hereby have caused this AGREEMENT to be executed on the day and year first above written:

CITY OF MARINA

CONSULTANT

By: _____
City Manager

By: _____
R. L. Hastings
R. L. Hastings & Associates LLC

Approved as to form:

By: _____
City Attorney, City of Marina

ATTACHMENT B

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/her agents, representatives, or employees.

Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workmen's Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability appropriate to the CONSULTANT's profession.

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, or a level acceptable to the CITY.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability: At a level acceptable to the CITY.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees, and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions. The general liability, automobile liability, and workmen's compensation policies are to contain, or be endorsed to contain, the following provisions:

1. The CITY, its officers, officials, employees, and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied, or used by the CONSULTANT; or automobiles owned, leased, hired, or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, or volunteers.
2. For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees, or volunteers.
4. The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A; VII, unless otherwise acceptable to the CITY.

Verification of Coverage. CONSULTANT shall furnish the CITY with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY. All endorsements are to be received and approved by the CITY before work commences. As an alternative to CITY forms, the CONSULTANT's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Honorable Mayor and Members
of the Marina City Council

City Council Meeting of
January 20, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,
APPROVING AN AGREEMENT WITH R.L. HASTINGS & ASSOCIATES,
LLC, OF PLACERVILLE, CALIFORNIA IN THE AMOUNT OF FOUR
THOUSAND DOLLARS (\$4,000) FOR ADMINISTRATIVE
SUBCONTRACTOR SERVICES TO PERFORM REQUIRED MONITORING
OF PROJECT FOR COMPLIANCE WITH REQUIREMENTS OF THE HOME
PROGRAM TO SUPPORT THE ROCKROSE GARDENS PROJECT, AND
AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT ON
BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE
CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2016-, approving an Agreement with R.L. Hastings & Associates, LLC, of Placerville, California in the amount of four thousand dollars (\$4,000) for Administrative Subcontractor Services to perform required monitoring of project for compliance with requirements of the HOME Program to support the Rockrose Gardens Project, and;
2. Authorizing City Manager to execute Agreement on behalf of City subject to final review and approval by the City Attorney.

BACKGROUND:

The City of Marina began working with Interim Inc. with the goal of developing an affordable housing project at 3012-3022 Lexington Court in March 2010. At a regular meeting of October 5, 2010, the former Redevelopment Agency of the City of Marina adopted Resolution No. 2010-30 (MRA), which approved entering into an Exclusive Negotiating Agreement with Interim Inc. for the project. The purpose of the project is to facilitate the development of twenty-one (21) units of permanent, supportive housing for very low income persons with mental disabilities.

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On September 10, 2015, documents were prepared and forwarded to HCD/HOME in connection with completion of construction on the Rockrose Gardens project.

ANALYSIS:

HCD/HUD mandates that the City of Marina conduct annual long-term monitoring of the Rockrose Project for the next 55 years. The scope of the monitoring is defined in the Agreement ("EXHIBIT A") between City of Marina and R.L. Hastings, LLC. The term of the contract will be January 20, 2016 to January 20, 2017. The intent of the contract is to complete the first year reporting using R. L. Hastings & Associates and guide city staff on all phases of the mandated monitoring, which would allow subsequent year reporting to be accomplished in-house. The fee for service for R.L. Hastings & Associates, LLC is Four Thousand (\$4,000) for a one year contract.

FISCAL IMPACT:

Should the City Council approve this request to enter into an agreement with R.L. Hastings & Associates, LLC their fee is not-to-exceed Four Thousand Dollars (\$4,000).

The cost for subcontractor services has been budgeted in account 100.440.000.00 6300.570.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Marilyn Lidyoff
Economic Development Coordinator
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina