



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** December 11, 2012

From: Lori Lamson **Item No:** 11
Acting Director of Community Development

Subject: PROFESSIONAL SERVICES AGREEMENT FOR CONSTRUCTION
MANAGEMENT SERVICES FOR THE RESIDENTIAL REHABILITATION
LOAN PROGRAM (RRLP)

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council approve the attached agreement between the Town of Apple Valley and Charles Abbott Associates, Inc. for construction management services for the Residential Rehabilitation Loan Program and, authorize the Town Manager to execute the agreement on behalf of the Town.

SUMMARY:

Pursuant to HUD's procurement standards, the Town is required to issue a new Request For Proposals (RFP) at least once every three (3) years for ongoing construction management services relative to administering the Residential Rehabilitation Loan Program (RRLP). As a result, the Town of Apple Valley issued an RFP for construction management services for the RRLP on February 13, 2012. A total of five (5) proposals were received and all were analyzed by staff.

The selection of the construction management services was put on hold until the Local Preference Ad Hoc Committee completed its recent work. The Town Council recently adopted a revised Purchasing Ordinance upon the recommendation of the Ad Hoc Committee. Even though this program is not subject to the Local Preference requirements identified in the Purchasing Ordinance, due to the use of Federal funding, staff wanted to ensure that the review process followed basic procedures recommended by the Ad Hoc Committee.

Based on a review panel comprised of the Housing Division staff, the panel recommended Charles Abbott Associates, Inc. to provide construction management services for the RRLP. The other firms in the top three were Raventek, Inc. and Willdan.

The panel's recommendation is based on the firm's capacity to address tasks identified in the Scope of Services such as work write-ups, cost estimates, preparation of bid documents,

change orders, lead-based paint, asbestos, mold assessments and construction inspection services. The administration of the RRLP program is enhanced by the efficiency and accessibility provided by Charles Abbott Associates, Inc. and the firm's familiarity and experience in providing Building and Safety services to the residents of the Town of Apple Valley. Charles Abbott Associates currently administers the construction management function of the RRLP program for the Town.

The total cost of providing construction management services is at a not-to-exceed cost of \$2,500 per project with an additional amount of \$500 for each additional contract that is entered into for the same project. These costs will be paid from delivery cost set-asides funded through the HOME Investment Partnerships Program (HOME) and Community Development block Grant (CDBG) Programs. The proposed agreement is attached for Council's review and approval. Based upon the forgoing, staff recommends adoption of the form motion.

FISCAL IMPACT:

No fiscal impact.

ATTACHMENTS:

Agreement for Professional Services

**TOWN OF APPLE VALLEY
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into this 12th day of December, 2012, between the TOWN OF APPLE VALLEY, a municipal corporation, referred to as "Town" and CHARLES ABBOTT ASSOCIATES, INC., a California S-Corporation referred to as "Consultant". Town and Consultant agree as follows:

RECITAL

1. PURPOSE

The purpose of this Agreement is to allow the Town to procure the services of an experienced professional firm to assist in the implementation of a Single Family Owner-Occupied Housing Rehabilitation Loan Program known as the Residential Rehabilitation Loan Program (RRLP). The RRLP will be administered pursuant to the HOME Investment Partnerships Program (HOME), Community Development Block Grant Program (CDBG) and the Cal-Home Program guidelines.

TERMS AND CONDITIONS

2. MISSION

Town hereby retains Consultant in the capacity as Consultant and Administrative Subcontractor for provision of the scope of services described in Attachment 1. Consultant hereby accepts such responsibility as described herein.

3. TERMS

This Agreement shall commence as of the day and year first above shown and shall remain in full force and effect for a period of three (3) years, beginning December 12, 2012 through December 12, 2015, unless terminated sooner as provided herein.

4. CONSULTANT RESPONSIBILITIES

Upon the request of the Community Development Director or designee, Consultant shall complete the work described in Attachment 1 (Scope of Services). Consultant commits the principal personnel listed below to the project for its duration:

Claude Stewart, Building Official

Patrick Carroll, Senior Building Inspector

5. REPLACEMENT OF NAMED PERSONNEL

It has been determined that the individual(s) named in this Agreement is (are) necessary for the successful performance of this Agreement. No diversion or replacement of this (these) individual(s) shall be made by Consultant without written consent of the Community Development Director or designee, provided that Town

may ratify, in writing, within ten (10) days of diversion or replacement and such ratification shall constitute the consent of the Town required by this clause. If the Community Development Director or Town fails to respond to Consultant within (10) days of notification by Consultant, said personnel diversion or replacement shall be deemed approved.

6. RELEASE OF NEWS INFORMATION

No news release, including photographs, public announcements or confirmation of same, of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of the Community Development Director, or designee.

7. CONFIDENTIALITY OF REPORTS

Consultant shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder and that the Town designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of the Community Development Director, or designee.

8. COMPENSATION

During the term of this Agreement, Town shall pay Consultant on a monthly basis. Said compensation shall be considered full and complete reimbursement for all Consultant's costs associated with the services provided hereunder.

Services are billable, pursuant to the fee schedule described in Attachment 2, for a total not-to-exceed figure of Two Thousand, Five Hundred Dollars (\$2,500) per case file and an additional not to exceed amount of Five Hundred Dollars (\$500) for each additional contract that is entered into for same project. The maximum compensation for services, including all consultant's costs, under the terms of this Agreement shall not exceed the maximum limits reimbursable through the Town of Apple Valley's HOME, CDBG, and Cal-Home grant programs.

Consultant shall be paid in accordance with Town's standard accounts payable system. All Invoices shall be approved by the Community Development Director, or designee.

9. RIGHT TO AUDIT

Town or any of its duly authorized representatives shall have access to any books, documents, papers and records of Consultant and/or its subcontractors which are pertinent to the specific program hereunder for the purpose of making an audit, an examination, excerpts and transcriptions. All books, records and supporting detail shall be retained for a period of five (5) years after the expiration of the term of this Agreement, or any extension thereof, or for any longer period of time as required by law.

10. AUDIT EXCEPTIONS

Consultant agrees that in the event the program established hereunder is subjected to audit exceptions by appropriate audit agencies, it shall be responsible for

complying with such exceptions and paying Town in full amount of liability resulting from such audit exceptions.

11. TOWN SUPPORT

Town shall provide Consultant with any plans, publications, reports, manuals, statistics, records or other data or information pertinent to the services to be provided hereunder which are reasonably available to the Town, but shall remain the property of Town. Any plans, publications, reports, manuals, statistics, records, other data or information provided by the Consultant as a part of the scope of services becomes the property of Town.

12. INDEPENDENT CONTRACTOR

Consultant shall perform the services as contained herein as an independent contractor and shall not be considered an employee of Town or under Town supervision or control. This Agreement is by and between Consultant and Town, and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between Town and Consultant.

13. CONFLICT OF INTEREST

Consultant agrees for the term of this Agreement not to enter into any agreement that will inure to the detriment of the Town of Apple Valley.

14. SUCCESSOR AND ASSIGNMENT

The services as contained herein are to be rendered by Consultant whose name is as appears first above written and said Consultant shall not assign nor transfer any interest in this Agreement without the prior written consent of Town.

15. INDEMNIFICATION

Consultant agrees to indemnify, defend (upon request by Town) and save harmless Town, its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage arising from or connected with Consultant's operations, or its services hereunder, including any workers' compensation suit, liability or expense, arising from or connected with the services performed by or on behalf of Consultant by any person pursuant to this Agreement to the extent such claim result from Consultant's negligent acts, errors or omissions or other wrongful conduct.

16. INSURANCE

Without limiting Consultant's indemnification of Town, Consultant shall provide and maintain at its own expense during the term of this Agreement the program(s) of insurance covering its operation pursuant to the requirements described in Attachment 3. Such insurance shall be provided by insurer(s) satisfactory to Town and evidence of such programs satisfactory to Town shall be delivered to the Community Development Director, or designee, within ten (10) days of the effective date of this agreement.

COMPLIANCE WITH LAWS

The parties agree to be bound by applicable federal, state and local laws, regulations and directives as they pertain to the performance of this Agreement.

17. NON-DISCRIMINATION

In the fulfillment of the program established under this Agreement, either as to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other terms of compensation, selection for training, including apprenticeship or participation in the program or the receiving of any benefits under the program, Consultant agrees not to discriminate nor to allow any subcontractor to discriminate on the basis of race, color, creed, religion, natural origin, ancestry, sex, marital status or physical handicap.

18. PROCUREMENT PRACTICES; CONFLICT OF INTEREST

(a) Consultant will comply with procurement procedures and guidelines established by 24 CFR, Part 85.36 (d) (1), Consultant "Procurement Standards". In addition to the specific requirements of 24 CFR, Part 85, Consultant shall maintain a code or standards of conduct which shall govern the performance of its officers, employees or agents in contracting with and expending the federal grant funds made available to Consultant under this Agreement. Consultant officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by state law, rules and regulations, the standards adopted by Consultant shall provide for penalties, sanctions or disciplinary actions to be applied for violations of such standards by the Consultant's officers, employees or agents, or by contractors or their agents. Consultant shall provide a copy of the code or standards adopted to Town forthwith. All procurement transactions without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The Consultant shall be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. Consultant agrees to adhere to conflict of interest provisions set forth in 24 CFR Section 570.611 and to the procurement rules specified in 24 CFR, Part 85.36, in its expenditure of all funds received under this Agreement.

19. AFFIRMATIVE ACTION AND CONTRACT COMPLIANCE

(a) Consultant shall make every effort to ensure that all projects funded wholly or in part by HUD funds shall provide equal employment and career advancement opportunities for small businesses, minorities, and women. In addition, CONSULTANT shall make every effort to employ residents of the area and shall keep a record of the positions that have been created directly or as a result of this program.

(b) Consultant shall comply with Executive Orders 11246 (Equal Employment Opportunity), 11375 (amending E.O. 11246), 11625 (Minority Business Enterprise), 12138 (National Women's Business Enterprise), 12432 (Minority Business Enterprise Development), 12250 (Leadership and Coordination of Nondiscrimination Laws), Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment

Act, applicable California Public Contracts Code, and other applicable federal, state, and local laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

(c) Affirmative Action

(1) Approved Plan

The Consultant agrees that it shall be committed to carry out an Affirmative Action Plan/Program in keeping with the principles as provided in President's Executive Order 11246 (Equal Employment Opportunity) as amended by Executive Orders 11375, 11478, 12086, 12107 and 13279.

(2) Small, Minority and Women-owned Business Enterprise

The Consultant will use its best efforts to afford small, minority, and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Contract. As used in this Contract, the term "minority group members" are those groups of United States citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act. Consultant may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

(3). Access to Records

The Consultant shall furnish and cause each of its own Consultants or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Town, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(4). EEO/AA Statement

The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant; state that it is an Equal Opportunity or Affirmative Action employer.

20. ANTI-KICK BACK PROVISIONS; EQUAL EMPLOYMENT OPPORTUNITY

(a) All contracts for construction or repair using funds provided under this Agreement shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction,

completion or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. Consultant shall report all suspected or reported violations to the Town. All contracts in excess of \$10,000.00 entered into by Consultant using funds provided under this Agreement shall contain a provision requiring compliance with Equal Employment Opportunity provisions established by Executive Order Number 11246, as amended.

(b) CONSULTANT agrees to comply with all Federal Statutes relating to equal opportunity and non-discrimination including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) which prohibits discrimination on the basis of race, color or national origin;
2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1686), which prohibits discrimination on the basis of sex;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age;
5. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing.

21. PREVAILING WAGE REQUIREMENT

(a) Any construction contracts awarded by Consultant using funds provided under this Agreement in excess of \$2,000.00 and rehabilitation of residential property only if such property contains not less than 8 units, shall include a provision for compliance with the Davis-Bacon Act [40 U.S.C. 276(a) to 276(a)(7)] and as supplemented by Department of Labor Regulations (29 CFR). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. Consultant shall report all suspected or reported violations to the Town.

22. COMPLIANCE WITH OTHER PROGRAM REQUIREMENTS

Consultant shall comply with all applicable federal laws and regulations set forth under the Subpart K of 24 CFR Part 570:

(a) 24 CFR Part 570.601 – Affirmatively Furthering Fair Housing Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and

implementing regulations in 24 CFR Part 1; Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act; and Executive Order 11063, as amended by Executive Order 12259 (3 CFR Part, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR Part 107, also apply.

(b) 24 CFR Part 570.602 - Section 109 of the Housing and Community Development Act Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR Part 6.

(c) 24 CFR Part 570.603 – Labor Standards Section 110(a) of the Act contains labor standards that apply to non-volunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units. The regulations in 24 CFR Part 70 applies to the use of volunteers.

(d) 24 CFR Part 570.604 - Environmental Standards. For purposes of section 104(g) of the Act, the regulations in 24 CFR Part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. Town shall assume the environmental review procedures under this Contract.

(e) 24 CFR Part 570.605 - National Flood Insurance Program Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR Parts 59 through 79 apply to funds provided under Part 570.

(f) 24 CFR Part 570.606 - Displacement, Acquisition and Relocation Requirements. The general policy for minimizing displacement shall be implemented pursuant to this Part.

(g) 24 CFR Part 570.607 - Employment and Contracting Opportunities Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 CFR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR Part 135.

(h) 24 CFR Part 570.608 – Lead Based Paint. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at Part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

(i) 24 CFR Part 570.609 – Prohibition of Use of Debarred, Suspended or Ineligible Contractors or Consultants. The requirements set forth in 24 CFR Part 5 apply to this program.

(j) 24 CFR Part 570.610 – Uniform Administrative Requirements and Cost Principles The GRANTEE, its agencies or instrumentalities, and CONSULTANT 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 24 CFR Part 570.502.

(k) 24 CFR Part 560.611 - Conflict of Interest. In the procurement of supplies, equipment, construction, and services by recipients and by Consultants, the conflict of interest provisions in 24 CFR Part 85.36 and 84.42, respectively, shall apply. No person who is an employee, agent, consultant, officer, or elected official or appointed official of the Town, or of CONSULTANT who exercise or have exercised any functions or responsibilities with respect to HUD funded activities assisted under this contract, 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 HUD-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a HUD-assisted activity, or with respect to the proceeds of the HUD-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

(l) 24 CFR Part 560.612 – Executive Order 12372. The Executive Order applies to CONSULTANT program only where the proposed use of funds is for the planning or construction (reconstruction or installation) of water or sewer facilities. Grantee is responsible to initiate the Executive Order Process for activities subject to review.

(m) 24 CFR Part 560.613 – Eligibility Restrictions for Certain Resident Aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are restricted from applying for benefits under the Town’s RRLP Program. The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of the regulation. Compliance can be accomplished by obtaining certification as provided in 24 CFR Part 49.20.

(n) 24 CFR Part 560.614 – Compliance with the Architectural Barriers Act and Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

24. LOBBYING

The Consultant hereby certifies that:

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

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

(d) Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352,

Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

25. REPORTING AND PAYMENT PROCEDURES

(a) Program Income. The Consultant shall report monthly all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Consultant shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Consultant may use such income during the period of this Agreement for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to the Town at the end of the term of this Agreement. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the Town.

(b) Indirect Costs. If indirect costs are charged, the Consultant will develop an indirect cost allocation plan for determining the appropriate share of Consultant's administrative costs and shall submit such plan to the Town for approval, in a form specified by the Town.

(c) Payment Procedures. The Town will pay to the Consultant funds available under this Agreement based upon information submitted by the Consultant and consistent with any approved budget and Town policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Consultant, and not to exceed actual cash requirements.

(d) Progress Reports. The Consultant shall submit regular progress reports to the Town in the form, content, and frequency as required by the Town.

26. TERMINATION AND TERMINATION COSTS

This Agreement may be terminated for any reason or for no cause, in whole or in part, at any time by either party upon giving thirty (30) days notice in writing to the other party. Notice shall include the information required for termination for convenience, as provided in the provisions of federal, state and local laws, rules or regulations including those regulations found at 24 CFR Part 85.44, Termination for Convenience. The Town is hereby empowered to give said notice.

The Town may immediately terminate this Agreement upon the termination, suspension, discontinuation or substantial reduction in Federal/State grant funds for the Agreement activity or if for any reason the timely completion of the work under this Agreement is rendered improbable, infeasible or impossible. If the Consultant materially fails to comply with any term of this Agreement, the Town may take one or more of the actions provided under federal, state and local laws, rules and

regulations, including those federal regulations located at 24 CFR Part 85.43, Enforcement, which include temporarily withholding cash, disallowing non-compliant costs, wholly or partly terminating the grant allocation, withholding future grant allocations, and other remedies that are legally available. In such event, the Consultant shall be compensated for all services rendered and all necessarily incurred costs performed in good faith in accordance with the terms of this Agreement that have not been previously reimbursed, to the date of said termination to the extent that grant funds are available from HUD or the State.

27. REVERSION OF ASSETS

Upon termination or expiration of this Agreement, the Consultant shall transfer to the Town all program funds on-hand at the time of termination or expiration and any accounts receivable attributable to the use of program funds.

All real property specifically acquired or improved in whole or in part with program funds in excess of \$25,000 under this Agreement must continue in the use that provides the service benefits and national objectives for which it was funded until five (5) years after expiration of this Agreement, or such longer period of time as determined by the Town; or it must be disposed of in a manner resulting in a reimbursement to the Town in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-grant funds for the acquisition of, or improvement to, the property.

28. SEVERABILITY

In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

29. INTERPRETATION

No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this Agreement is to be construed as if it were drafted by both parties hereto.

30. ENTIRE AGREEMENT

This Agreement, with attachments, supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Consultant by Town and contains all the covenants and agreements between the parties with respect to such retention.

31. WAIVER

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of other breach of the same or any other provision hereof.

32. CONTRACT EVALUATION AND REVIEW

The ongoing assessment and monitoring of this Agreement is the responsibility of the Community Development Department or designee. Consultant will provide monthly monitoring reports outlining accomplishments pursuant to achieving the scope of services described in Attachment 1.

33. NOTICE

Notices herein shall be presented in person or by certified or registered U.S. mail, as follows:

To Consultant: Rusty R. Reed, President
Charles Abbott Associates, Inc.
27401 Los Altos, Suite 220
Mission Viejo, CA 92691

To Town: Lori Lamson
Community Development Director
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Nothing in this paragraph shall be construed to prevent the giving of notice by personal service.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above shown.

Town of Apple Valley

BY _____
Frank W. Robinson, Town Manager

APPROVED AS TO FORM:

BY: _____
Town Attorney

Charles Abbott Associates, Inc. (Consultant)

BY: _____
Rusty R. Reed, President

Attachment 1
Scope of Services



C. SCOPE AND SERVICES

The scope and services that we are proposing are a continuation of the services that we are currently providing the Town. The following describes the services as well as some of the improvements of services that we have made to the Town's Residential Rehabilitation Program over the past couple of years.

First, upon receipt of the "Initial Inspection Request" the Senior Inspector, who will act as the Construction Manager (CM), prepares a working file inclusive of inspection request checklist and proceeds to set up an appointment for initial inspection with the owner. While setting the appointment the CM outlines what is to be expected in this first meeting and answers any question the applicant may have. To assist the CM, staff utilizes a procedures checklist to ensure consistency throughout the process.

During the initial inspection CAA staff clarifies the priorities of improvements in the following order:

1. Liabilities (health and safety/code violations)
2. Asset protection (roofing, paint etc.)
3. Energy conservation and efficiency (weatherization, insulation, etc.)

The CM then completes the inspection and checklist, as well as takes the photo documentation noted under Determination of Cost Reasonableness.

Based on the information gathered from the initial inspection a Work Write-Up is prepared outlining a scope of work for each item of improvement at the project site. The Determination of Cost Reasonableness is based on a comparison of the market price with the most recent bid prices from our database. Photo documentation is then reconciled to the Work Write-up and delivered to the Project Manager (PM) along with the inspection report/checklist. Delivery of a completed Work Write-Up, averages less than two weeks to complete.

Interim inspections are performed by the CM for all change orders or on an as needed basis. However, the homeowner, the contractor or the PM may also request these interim inspections. All permitted items are inspected for code compliance by CAA staff with program goals and objectives in mind before a request for payment may be submitted to the Town.

Upon receipt of Request For Payment (or Final Inspection) the CM contacts the owner and schedules a convenient time for the inspection. Often the contractor cannot make himself available and is not critical to be in attendance during the final inspection. However we will insist on his presence under extenuating circumstance. While setting the appointment the CM outlines what is expected at the inspection and answers any question the applicant may have. The CM then reviews the project file and reconciles all change orders, disbursements and balance due on the project. The CM then prepares the Notice of Completion and Construction Disbursement specific to the project.

During the final inspection all line items outlined in the Work Write-Up are inspected for completeness. Photo documentation is gathered for each line item. The Notice of Completion and Construction Disbursement are





then signed by the owner and witnessed by the CM. After the inspection photo documentation is reconciled to the Work Write-up, the photos are delivered to the PM along with the Notice of Completion and Construction Disbursement for the project.

After various trials with formatting for required documents and records, the CM maintains standardized templates for all documentation that incorporate the specific nuances each Project Manager requires for their project Work Write-ups. This is just one example of how availability, flexibility and open communication between town and contract staff have allowed this program to evolve to meet the needs of the community. We hope to continue being a part of this evolution.



Attachment 2

Fee Schedule

Hourly Rates

The hourly rates below include general and administrative overhead, fees and employee payroll burden. These rates are subject to an annual adjustment based upon increases adopted by Charles Abbot Associates, Inc. as reflected in the Consumer Price Index (CPI).

<i>CLASSIFICATION</i>	<i>HOURLY RATES</i>
Principal	130.00
Building Official	87.00
Senior Building Inspector	70.00
Building Plan Checker	70.00
Building Inspector/Plan Checker	67.00
Permit Specialist	66.00
Expert Witness Services	130.00
Senior Contract Administrator	130.00
Administrative Assistant	67.00
Word Processor	54.00
Clerical	54.00

Estimate and Not-to-Exceed

Based on project history, an estimate of \$1,800 per project is a good average for each project. Some projects will run smoothly and cost less than this estimate, while others will require a little more attention and run more than this estimate.

The not-to-exceed amount shall be \$2,500 per loan with an additional not to exceed amount of \$500 for each additional contract that is entered into. For example, if there were three contracts for one project, the not-to exceed amount would increase to \$3,500. The above billing rates would be used to charge against this amount. It is not foreseen that the base amount would be exceeded more than a few times over the life of the contract.

Billing hours shall be in increments of one-quarter of an hour.