

**TOWN OF  
APPLE VALLEY, CALIFORNIA  
AGENDA MATTER**

**Subject Item:**

**PROFESSIONAL SERVICES AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE RESIDENTIAL REHABILITATION LOAN PROGRAM (RRLP).**

**SUMMARY STATEMENT**

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 5, 2009. A total of eight (8) proposals were received, and the following four firms were invited to the interview process: American Multifamily, Cambridge Partnership, Charles Abbott Associates, Inc., and Willdan.

Based on a review panel comprised of Housing Section staff, the panel recommended Charles Abbott Associates, Inc. to provide construction management services for the RRLP. 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 building inspection services. Housing Section staff expects the administration of the RRLP will be enhanced by the 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.

The total cost of providing construction management services is at a not-to-exceed cost of \$2,500 per project. The majority of 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.

**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.

**Proposed by:** Housing Section

**Item Number** \_\_\_\_\_

**T. M. Approval:** \_\_\_\_\_

**Budgeted Item**  **Yes**  **No**  **N/A**

## TOWN OF APPLE VALLEY AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into this 1<sup>st</sup> day of May, 2009, 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 May 1, 2009 through May 1, 2012, unless terminated sooner as provided herein.

4. CONSULTANT RESPONSIBILITIES

Upon the request of the Assistant Town Manager of Economic and Community Development 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, Inspector

5. REPLACEMENT OF NAMED PERSONNEL

It has been determined that the individuals(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 Assistant Town Manager of Economic and Community Development 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 Assistant Town Manager of Economic and Community Development or Town fails to respond to Consultant with ten (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 Assistant Town Manager of Economic and Community Development, 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 Assistant Town Manager of Economic and Community Development Department, 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. 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 Assistant Town Manager of Economic and Community Development, 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, its Economic Development Department or Redevelopment Agency.

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 Assistant Town Manager of Economic and Community Development, or designee, within ten (10) days of the effective date of this agreement.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 CDBG 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 CDBG funds are available from HUD.

27. REVERSION OF ASSETS

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

All real property specifically acquired or improved in whole or in part with CDBG 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-CDBG 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 Economic 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:                           Kenneth J. Henderson, Assistant Town Manager,  
Economic and Community Development Department  
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**

The responsibilities of the Consultant will entail the performance of certain technical tasks to include conducting property inspections, preparing rehabilitation work write-ups, estimating project costs, and managing construction activities. Charles Abbott Associates, Inc. will provide the Town with all program information needed to comply with Federal and State reporting requirements.

#### **HOUSING REHABILITATION PROGRAM IMPLEMENTATION**

The specific tasks to be performed by Charles Abbott Associates, Inc. staff in assisting with the administration of the Town of Apple Valley's Residential Rehabilitation Loan Program (RRLP) are as follows:

1. Prepare a work write-up and cost estimate accurately describing the existing conditions and necessary repairs and improvements. Prepare a scope of work in a form sufficient to advertise for bid.
2. Order tests and assessments as needed, inclusive of lead-based paint requirements and asbestos assessments.
3. Prepare a cost estimate and bid documents for each applicant. The bid documents should include a cover letter for the homeowner, cover letter for the contractor, scope of work and bid acceptance form. Copies of the work write-up and cost estimate are to be forwarded to the Town on a timely basis.
4. Submitted bids may be evaluated upon Town request in relation to the cost estimate. The process employed to determine the reasonableness of the costs must be documented.
5. Conduct progress inspections to ensure that work is proceeding in a timely manner and to authorize and disburse progress payments. Confirm that all necessary permits have been obtained from the Town's Building and Safety Division and that the Department has inspected and approved all work performed. Process requests for change orders from contractors. Prepare and process progress payment forms after obtaining appropriate signatures from the contractor, owner and consultant.
6. Perform punch list walkthrough upon completion of work and coordinate filing a Notice of Completion.
7. Assist owners to secure labor and material repairs from contractor responsible for construction defects for one year from date of final approval by the Town's Building and safety Division.
8. Acquire lien releases from contractors and subcontractors, obtain homeowner's authorization for final payment and execute closeout of rehabilitation work by ensuring that the permanent file contains all required documentation for monitoring and audit purposes.
9. Prepare weekly updates and monthly progress reports to Town staff. Maintain complete and accurate records in compliance with federal and state reporting requirements.
10. Return all telephone calls within a 24 hour period, Monday through Thursday. If a call can not be returned due to extenuating circumstances, the Town should be notified within 24 hours of the initial call.

## **ATTACHMENT 2**

### **FEE SCHEDULE**

Charles Abbott Associates, Inc. is to provide the services described in the Scope of Services for a total not-to-exceed fee of \$2,500 per case file.

The following personnel will be billed out based on the rates indicated below:

Claude Stewart, Building Official	\$87.00 per hour
Patrick Carroll, Inspector	\$70.00 per hour

This rate is fully burdened and includes salaries, benefits, travel and overhead costs. The Town will not be billed for any additional incidental costs.

Additionally, should there be an occurrence where a case file exceeds the average number of hours to complete; Charles Abbott Associates, Inc. has agreed to continue providing the necessary services up to the completion of said project without any additional cost to the Town.



## **Attachment 3**

### **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, its 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 from CO 0001).
2. Insurance Services Offices form number CA 0001 (Ed. 1187) covering Automobile liability, code 1 (any auto).
3. Workers' Compensation Insurance as required by the State of California and Employer's Liability.
4. Errors and omissions liability insurance 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.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and omissions liability: \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

#### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the Town. Except with respect to professional liability coverage, at the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, 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 and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Town, its officers, officials, employees and volunteers are to be covered as insureds 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 Town, 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 Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, 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 Town, 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 cancelled by either party except after thirty (30) days prior written notice by first class mail, postage prepaid, has been given to the Town, ten (10) days notice if cancellation is due to nonpayment of premium.

### **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 Town.

### **Verification of Coverage**

Consultant shall furnish the Town with original endorsements effecting 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 Town. All endorsements are to be received and approved by the Town before work commences. As an alternative to the Town's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, or endorsement/certificated approved by the Town.