

Meeting Date: 11-18-03

AGENDA REPORT

Agenda Item # 7B-4

Santa Clara

City of Santa Clara, California



CC
11-18-03

DATE: November 3, 2003

TO: Executive Director for Redevelopment Agency Action
City Manager for Council Action

FROM: Housing & Community Services Division Manager

SUBJECT: Consultant Services Agreement with Charities Housing for Preparation of Feasibility and Planning Studies for Affordable Housing at the former BAREC Site and Resolutions Finding Benefit of the Activity to the Redevelopment Project Areas

EXECUTIVE SUMMARY:

A standard consultant services contract and resolutions has been prepared for retaining Catholic Charities as consultant for preparation of feasibility and planning studies for affordable housing at the former BAREC site, located on Winchester Boulevard at Forest Avenue. Under the consultant services contract, Charities Housing will be responsible for coordinating preparation of: a) conceptual site planning and schematic design work performed by architect and engineers; b) completion of reports required for site acquisition and project feasibility, including geotechnical investigation, environmental phase one report, noise traffic and archaeology; c) review legal documents associated with acquisition and funding; d) complete a site survey; and, e) identify and apply for other potential revenue source. City/Agency resolutions making finding of benefit to the redevelopment project areas are included as part of the recommended action.

A copy of the Consultant Services Agreement with Charities Housing is available in Council Offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Retaining consultant services to accomplish the described tasks will help in getting the affordable housing portion of the BAREC site underway. Preparation of the feasibility studies is part of the necessary planning for development of the site. No obligation is placed on a future housing project for the Agency's cost for preparing the preliminary site feasibility studies.

ECONOMIC/FISCAL IMPACT:

Cost to the Agency for the consultant services agreement is \$210,000 that can be covered under the BAREC Senior Housing capital budget account (910-5545-80800-9160).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA FINDING THAT THE USE OF THE REDEVELOPMENT AGENCY'S LOW AND MODERATE INCOME HOUSING FUND FOR HOUSING SERVICES TO BE PROVIDED IN FISCAL YEAR 2003-04 OUTSIDE OF THE REDEVELOPMENT PROJECT AREAS BY CHARITIES HOUSING WILL BENEFIT THE REDEVELOPMENT PROJECT AREAS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, AS FOLLOWS:

WHEREAS, the City Council of the City of Santa Clara has heretofore adopted the Redevelopment Plan for the University Redevelopment Project on February 3, 1961 by Ordinance No. 972; and

WHEREAS, the City Council of the City of Santa Clara has heretofore adopted the Redevelopment Plan for the Bayshore North Redevelopment Project on December 28, 1973 by Ordinance No. 1283 (collectively, with the University Redevelopment Project, the "Redevelopment Projects"); and

WHEREAS, pursuant to Section 33334.2(a) and 33334.6 (c) of the California Community Redevelopment Law (Cal. Health and Safety Code Section 33000 et seq.) not less than 20% of all taxes which are allocated to the Redevelopment Agency of the City of Santa Clara ("Agency") are set aside by the Agency in a Low and Moderate Income Housing Fund and used by the Agency for the purpose of increasing, improving and preserving the community's supply of low and moderate-income housing available at affordable housing costs to persons and families of low and moderate-income, including very low income persons; and

WHEREAS, pursuant to Section 33334.2(e) (8) of the Community Redevelopment Law, the

reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof irrespective of the fact that any one or more sections(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA AT A REGULAR MEETING THEREOF DULY HELD ON THE ___ DAY OF _____, 2003, BY THE FOLLOWING VOTES:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAINED: COUNCIL MEMBERS:

ATTEST:

J.E. BOCCIGNONE, CITY CLERK
OF THE CITY OF SANTA CLARA

Present: Council Members Dominic J. Caserta, Rod Diridon, Jr., Patrick Kolstad, Jamie L. Matthews, John L. McLemore, Aldyth Parle and Mayor Patricia M. Mahan.

Staff present: City Manager, Assistant City Manager, Director of Public Works, Director of Planning and Inspection, City Attorney and City Clerk.

MOTION was made by Matthews, seconded and carried with Diridon abstaining on the minutes of October 21, 2003 (not present at the meeting), that the **Minutes** for the meetings held on **September 16, 2003, September 30, 2003** and **October 21, 2003** be adopted as written.

MOTION was made by Matthews, seconded and unanimously carried, that, per the Director of Planning and Inspection (11/3/03), the Council **continue** to December 2, 2003, consideration of the **Conservation District Working Group** recommendations on the proposed Conservation District.

MOTION was made by Matthews, seconded and carried with McLemore abstaining (conflict of interest, cannot be impartial), that the Council **continue** to December 16, 2003 consideration of the **Minutes** of the **Subdivision Committee** for the meeting of October 10, 2003 and the request submitted by **Lucille Tersigni/Flora Vista Residential LP** to approve the Tentative Parcel Map to subdivide the existing parcel at 3600 Flora Vista Avenue into two separate parcels.

As a Special Order of Business, the Council proceeded with the presentation regarding the recent trip of the **Santa Clara Boys Under 13 Soccer Team** to Sister City Izumo, Japan. Dan Gisi, soccer team trip coordinator, introduced coach Jeff Provanear and Roy Lederman and showed photographs of the trip. The Mayor was presented with a ceremonial kimono from Izumo and the trophy the team won was presented to the team coach, Augie Marques. The Mayor thanked the International Exchange Commission for their work on the event. Photographs of the Council, team and coaches were taken.

Also as a Special Order of Business, the Council proceeded with the distribution of the **2003 Art and Wine Festival proceeds** totaling \$45,000. The Chairperson of the Parks and Recreation Commission, Vonna Gissler presented checks to representatives of the following designated nonprofit organizations: Santa Clara Police Activities League - \$13,000, Friends of Santa Clara Parks

appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

32. OTHER AGREEMENTS.

This Agreement shall not prevent either Party from entering into similar agreements with others.

33. CONFLICT OF INTEREST.

Contractor certifies that to the best of its knowledge, no Agency employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise Agency if a conflict arises.

34. TERMINATION OF AGREEMENT.

a. Termination Without Cause

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and Agency shall pay Contractor for all Services satisfactorily performed up to such date.

b. Termination For Cause

For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement. Either Party may terminate this Agreement in the event of a default by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than ten (10) calendar days after a Party receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement. In the event this Agreement is terminated for cause as set forth under this section, Agency shall pay Contractor for all Services satisfactorily performed up to the date the Agreement is terminated. Agency may deduct from such payment the amount of actual damage,

transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

27. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

28. STATUTES AND LAW GOVERNING CONTRACT.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

29. COMPLIANCE WITH LAWS.

Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

30. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and Agency regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

31. VENUE.

In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise

incorporated into this Agreement. Such changes, which are mutually agreed upon by City and Contractor, shall be incorporated in amendments to this Agreement.

23. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT.

This Agreement embodies the agreement between Agency and Contractor and its terms and conditions. No other understanding, agreements, conversations, or otherwise, with any officer, agent, or employee of Agency prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon Agency.

24. SEVERABILITY CLAUSE.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

25. WAIVER.

Contractor agrees that waiver by Agency of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

26. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to Agency addressed as follows:

Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 248-3381

And to Contractor addressed as follows:

Charities Housing
465 S. First Street
San Jose, California 95113
or by facsimile at (408) 280-1140

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile

18. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to Agency, when such defects are due to the negligence, errors or omissions of Contractor.

19. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background, sexual orientation, or marital status, in violation of state or federal law.

20. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify Agency, its Board, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Agency shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

21. INSURANCE REQUIREMENTS.

A. During the term of this Agreement, and for any required time thereafter as set forth below, Contractor shall purchase and maintain in full force and effect, at no cost to Agency, the following insurance policies:

- 1) commercial general liability policy (bodily injury and property damage);
- 2) comprehensive automobile liability policy;
- 3) workers' compensation and employer's liability policy; and
- 4) professional liability policy.

B. Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C entitled "INSURANCE REQUIREMENTS."

22. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and

Contractor shall submit to Agency any and all reports concerning its performance under this Agreement that may be requested by Agency in writing. Contractor agrees to assist Agency in meeting Agency's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

15. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents that its personnel are qualified to furnish services in the form of labor and materials of the type and quality which Agency requires and that Contractor agrees to perform all work in accordance with generally accepted business practices and performance standards of the industry. Agency expressly relies upon Contractor's representations regarding its skills and knowledge. Agency shall restrict its service requests to those projects which are within the skill and capability levels of Contractor and its employees.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to Agency. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by Agency for similar projects.

16. MONITORING AND EVALUATION OF SERVICES.

Agency may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to Agency policy and to the terms of this Agreement. Agency may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable Agency, city, county, state and federal requirements. If, in the course of monitoring and evaluation, Agency believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, Agency may notify Contractor in writing and Contractor agrees to respond in writing to Agency within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, Agency may notify Contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

17. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by Agency. Contractor shall be as fully responsible to Agency for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

harmless the Agency, its Board, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of Agency's credit by Contractor under this Agreement.

11. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of Agency, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of Agency but Contractor may retain and use copies thereof. Agency shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. USE OF AGENCY NAME OR LOGO.

Contractor shall not use Agency's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of Agency.

14. RIGHT OF AGENCY TO INSPECT RECORDS OF CONTRACTOR.

Agency, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to Agency. Any expenses not so recorded shall be disallowed by Agency.

5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on June 30, 2004.

6. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST.

This Agreement is a contract for professional services. Agency and Contractor bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of Agency. However, claims for money due to or to become due to Contractor from Agency under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to Agency. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

7. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

8. SUBCONTRACTING.

None of the Services provided under this Agreement shall be performed by subcontractors unless such subcontractors are specifically identified by Contractor and pre-approved by Agency in writing.

9. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that in performing the work required under this Agreement, Contractor and any person employed by or contracted with Contractor to furnish labor and/or materials under this Agreement is not an agent nor employee of Agency. Contractor has full rights to manage its employees subject to the requirements of the law.

10. NO PLEDGING OF AGENCY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of Agency or incur any obligation in the name of Agency. Contractor shall save and hold

2. SCOPE OF SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by Agency at his/her own risk and expense. Services to be provided to Agency are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written *Notice to Proceed* from Agency. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When Agency determines that Contractor has satisfactorily completed the Services, Agency shall give Contractor written *Notice of Final Acceptance*. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, Agency shall make this determination within fourteen (14) days of its receipt of such request.

4. COMPENSATION AND PAYMENT TO CONTRACTOR.

- A. In consideration for Contractor's complete performance of the Services, Agency shall pay Contractor for all Services rendered by Contractor in accordance with the rate per hour for labor and cost per unit for materials as outlined in Exhibit B entitled "Fee Schedule." The payments made by Agency under this Agreement will be the amounts charged for Services provided and billed by Contractor, subject to verification by Agency, pursuant to the hourly rates set forth in the Fee Schedule supplied in writing by Contractor and maintained on file with Agency at the time the Services are provided.
- B. Contractor shall bill Agency on a monthly basis for the Services provided by Contractor during the preceding month, subject to verification by Agency. Payment to Contractor for Services will be made within thirty (30) days of Agency's receipt of invoice.

AGREEMENT FOR SERVICES
by and between the
REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA, CALIFORNIA,
and
CHARITIES HOUSING

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 2003, ("Effective Date") by and between CHARITIES HOUSING, a non-profit corporation incorporated under the laws of California _____ corporation ("Contractor"), and the REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, a redevelopment agency, a public body, corporate and politic, organized and existing in the County of Santa Clara under, and by virtue of, the laws of the State of California Health and Safety Code Section 3300, *et seq* ("Agency"). Agency and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. Agency desires to secure professional services more fully described in this Agreement;
- B. Contractor represents that it, and its subcontractor's, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of Agency; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

Agency hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, Agency may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of Agency's choice. Agency shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

MOTION was made by Matthews, seconded and unanimously carried, that, per the Director of Public Works (11/6/03), the Council **approve** and authorize the City Manager to execute an Agreement for consultant services with Fehr & Peers Associates in an amount not to exceed \$60,220 for Bicycle Improvements 2003-2004 (Bicycle Plan Development and Bicycle Collision Analyses) and to make minor, non-substantive modifications to the Agreement if necessary.

MOTION was made by Matthews, seconded and unanimously carried, that, per the Housing and Community Services Division Manager (11/3/03), the Council **approve** the Agreement for Services between the Charities Housing and the Redevelopment Agency to prepare affordable housing feasibility studies of the Bay Area Research and Extension Center (BAREC) site and **pass and adopt** Resolution No. 7088 entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA FINDING THAT THE USE OF THE REDEVELOPMENT AGENCY'S LOW AND MODERATE INCOME HOUSING FUND FOR HOUSING SERVICES TO BE PROVIDED IN FISCAL YEAR 2003-04 OUTSIDE OF THE REDEVELOPMENT PROJECT AREAS BY CHARITIES HOUSING WILL BENEFIT THE REDEVELOPMENT PROJECT AREAS" which finds benefit of the activity to the Redevelopment Project Areas. 

MOTION was made by Matthews, seconded and unanimously carried, that the Council **note and file** the following Informational Memos: Expansion of Materials Accepted by City's Residential Curbside Recycling Program (Director of Streets and Automotive Services - 11/3/03), Status Update Report on the Public Benefits Charge Program (Director of Electric Utility - 11/4/03) and Song Exchange with Izumo and Santa Clara Students (Public Communications Manager - 11/12/03).

MOTION was made by Matthews, seconded and unanimously carried, that the Council **note and file** the Minutes of the Youth Commission for the meeting of October 14, 2003 and of the Conservation District Working Group for the meeting of October 29, 2003.

MOTION was made by Matthews, seconded and unanimously carried, that, per the Director of Planning and Inspection (11/5/03), the Council **approve**, subject to conditions, the request submitted by Gateway Santa Clara (Senior Project) for a Special Permit to allow for the placement and use of a construction trailer at 1000 El Camino Real for a one year period to expire on November 18, 2004 (PLN2003-04005).



Exhibit F

CHARITIES HOUSING

**Affidavit of Compliance with Ethical Standards
[Redevelopment Agency of the City of Santa Clara]**

I, _____, being first duly sworn, depose and say that I am the [title or capacity] of _____ [entity name] and I hereby state that I have read and understand the language, titled "Ethical Standards for Contractors Seeking to Enter into an Agreement with the Redevelopment Agency of the City of Santa Clara" (herein "Ethical Standards") set forth in Exhibit E. I have authority to make these representations on my own behalf and on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on the review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in Footnote #1 of Exhibit E (i.e., owner or co-owner of a sole proprietorship, general partner, etc.) has been convicted of any one or more of the crimes identified in Exhibit E within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Contractor Legal Name

Signature

Title

NOTARY'S ACKNOWLEDGEMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgement of execution of the affidavit by the signatory. If the affidavit is on behalf of a contractor, partnership, or other legal entity, the entity's complete legal name and title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a contractor, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Contractor can be imputed to Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of Contractor, with Contractor's knowledge, approval or acquiescence, Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. Agency may also terminate this Agreement in the event any one or more of the following occurs:

1. If Agency determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,

2. If Agency determines that Contractor fails to submit information, or permits false information, which is required in order to perform or be awarded a contract with Agency, including, but not limited to, Contractor's failure to maintain a required State license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event Contractor, as an applicant or bidder, is ruled ineligible (debarred) to participate in a contract award process, or the Agreement is terminated pursuant to these provisions, Contractor may appeal Agency's action to the Agency Board by filing a written request with the City Clerk within ten (10) days of the notice given by Agency of its action. The matter will be heard within thirty (30) days of the filing the appeal request with the Agency Secretary. Contractor will have the burden of proof on the appeal. Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the Agency for the successful performance of the obligations of the Contractor to the Agency.

Exhibit E

CHARITIES HOUSING

Ethical Standards for Contractors Seeking to Enter into an Agreement with the Redevelopment Agency of the City of Santa Clara

Termination of Agreement for Certain Acts.

A. Agency may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of an offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of an Agency contractor or subcontractor; and/or,
 - e. Made (or makes) and false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of the corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
CHARITIES HOUSING

EXHIBIT D
Assurances

The Recipient of RDA Housing Fund Grant monies hereby assures and certifies compliance with the regulations, policies, guidelines and requirements (including, but not limited to, federal OMB Circulars No. A-87, A-102, A-110, and A-122) as they relate to the application, acceptance and use of funds for this assisted activity. Also, the Recipient assures and certifies to the RDA that:

1. It possesses legal authority to make a grant submission and to execute a community development and housing program;
2. Its governing body had duly adopted or passed as an official act as a resolution, motion or similar action authorizing the person identified as the official representative of the grantee to submit the final statement and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the grant to act in connection with the submission of the final statement and to provide such additional information as may be required.
3. The grant will be conducted and administered in compliance with:
 - a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d et seq.);
 - b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601 et seq.);
 - c. Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383; U.S.C. 5301 et seq.), as amended; and
 - d. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112; 29 U.S.C. 794), as amended; and
 - e. The Age Discrimination Act of 1975 (Public Law 94-135; U.S.C. 6101), as amended.
4. It will affirmatively further fair housing.

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H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Agency or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.
3. The Agency reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to Agency and as described in this Agreement. Contractor shall file with the Agency all certificates and endorsements for the required insurance policies for Agency's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to Agency, or its representative as set forth below, at or prior to execution of this Agreement. Upon Agency's request, Contractor shall submit to Agency copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to Agency pursuant to this Agreement shall be mailed to:

The Redevelopment Agency of the City of Santa Clara
Housing & Community Services Division
1500 Civic Center Drive
Santa Clara, CA 95050
Telephone: (408) 615-2490, or
Fax: (408) 248-3381

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The Redevelopment Agency of the City of Santa Clara, its Agency Board, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for Agency, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to Agency at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and Agency agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by Agency, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to Agency for review.

- d. Coverage shall contain no contractors' limitation endorsement limiting the scope of coverage for liability arising from pollution, personal injury, Owners' and Contractors' protective Liability; and
- e. Contractual Liability coverage shall expressly include all liability assumed under this Agreement.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

- 1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
- 2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
- 3. This policy must include a Waiver of Subrogation in favor of the Redevelopment Agency of the City of Santa Clara, its Agency Board, commissions, officers, employees, volunteers and agents.

AGREEMENT FOR SERVICES
by and between the
REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA, CALIFORNIA
and
CHARITIES HOUSING

EXHIBIT C

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the Agency, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another;
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability;

AGREEMENT FOR SERVICES
by and between the
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and
CHARITIES HOUSING

EXHIBIT B
FEE SCHEDULE

TOTAL BUDGET

<u>Cost Category</u>	<u>Not to Exceed</u>
1. Architecture/Civil Engineering	\$140,000
2. Surveying	15,000
3. Detailed Environmental Reports Beyond those in the EIR	30,000
4. Contractor Administrative Costs	15,000
5. Miscellaneous Soft Costs	10,000

In no event shall the amount billed to Agency by Contractor for services under this Agreement exceed \$ 210,000, subject to budget appropriations.

ACTUAL COST BASIS FOR REIMBURSEMENT

Agency shall reimburse Contractor for actual costs incurred for line item expenses only. Reimbursement of line item expenses shall not exceed the amounts indicated for each Cost Category. To support its Request for Actual Cost Reimbursement, Contractor shall submit a copy of subcontractor's billing statement.

AGREEMENT FOR SERVICES
by and between the
REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA, CALIFORNIA
and
CHARITIES HOUSING

EXHIBIT A
SCOPE OF SERVICES

The following Scope of Goods/Services will be provided to Agency by Contractor under this Agreement:

The Scope of Work that CHDC proposes to complete within approximately eight (8) months from the execution date of this Agreement will include the following:

1. Coordinate preparation of conceptual site plan and schematic design work by architect, consultant and civil engineer;
2. Completion of consultant reports required for site acquisition and project feasibility, including, but not limited to geotechnical investigation, environmental phase one reports (site specific), noise, traffic, archaeology, etc.;
3. Review of legal documents associated with site acquisition and funding;
4. Completion of site Survey; and,
5. Preparation of applications for potential revenue sources.

35. COMPLIANCE WITH ETHICAL STANDARDS.

As a condition precedent to entering into this Agreement, Contractor shall:

- a. Read the attached Exhibit D entitled "ETHICAL STANDARDS," and,
- b. Execute the affidavit attached as Exhibit E entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, CALIFORNIA
 a redevelopment agency, a public body, corporate and politic,
 organized and existing in the County of Santa Clara
 under and by virtue of the laws of the State of California

Approved as to form:

 MICHAEL R. DOWNEY
 Agency General Counsel

 JENNIFER SPARACINO
 Executive Director

Attest:

Address:
 1500 Warburton Avenue
 Santa Clara, CA 95050
 Telephone: (408)615-2490
 Fax: (408)248-3381

 J. E. BOCCIGNONE
 Agency Secretary

"Agency"

CHARITIES HOUSING
 A Non-Profit Corporation

By: _____
 (Signature of Person executing the Agreement on behalf of Contractor)

Chris Block
 (Please Print or Type Name)

Title: Executive Director

465 S. First Street
 San Jose, CA 95113
 Telephone: (408)282-1133
 Fax: (408)280-1140

"Contractor"

if any, sustained by Agency due to Contractor's failure to perform the Services or for breach of this Agreement.

c. Opportunity To Cure Default

Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have five (5) days from the receipt of such notice to cure the default by making such payment or performing the required obligation. If the default is cured to the mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

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