



City of Carson Report to Mayor and City Council

November 1, 2011
New Business Consent

SUBJECT: CONSIDER APPROVAL OF A FIRST AMENDMENT TO CONSULTING SERVICES/CONSULTANT RETAINER AGREEMENT WITH BARR & CLARK, INC. TO PROVIDE LEAD-BASED PAINT INSPECTION AND CONSULTING SERVICES FOR THE RESIDENTIAL REHABILITATION PROGRAM

Submitted by Clifford W. Graves
Economic Development General Manager

Approved by David C. Biggs
City Manager

I. SUMMARY

The existing agreement for lead-based paint inspection and consulting services in connection with the city's residential rehabilitation program will expire December 7, 2011. That agreement, approved by City Council at its December 7, 2010 meeting (Exhibit No. 1), was for a term of one year, with an option to extend the agreement for an additional one-year period at the discretion of the city. Staff recommends that the City Council approve a one-year extension and First Amendment (Exhibit No. 2) to the agreement.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the First Amendment to the city of Carson Consulting Services/Consultant Retainer Agreement (Lead-Based Paint Inspection and Consulting Services) with Barr & Clark, Inc., for a period of one (1) year, in an amount not to exceed \$41,025.00.
2. AUTHORIZE the Mayor to execute the First Amendment following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

Inspection for and abatement of lead-based paint hazards is an essential component of the Economic Development Work Group's residential rehabilitation program. Such inspection and abatement is required in the rehabilitation of all residential structures built before 1978 where such rehabilitation is performed using Community Development Block Grant (CDBG) funds, under the provisions of Section 24 of the Code of Federal Regulations (CFR), Part 35. Enforcement of the provisions of 24 CFR 35 has become an

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area of emphasis in recent years for the U. S. Department of Housing and Urban Development (HUD).

The agreement, approved by the City Council on December 7, 2010 (Exhibit No. 3), included the option to extend it for an additional one-year period at the discretion of the city.

The scope of services to be performed under the First Amendment to the agreement is summarized as follows:

- a. Conduct lead hazard inspection/evaluation. During the evaluation, consultant shall determine whether lead-based paint hazards exist in the unit and where.
- b. Conduct testing of all surfaces to be disturbed during the rehabilitation process. A certified lead-based paint inspector or risk assessor must conduct the testing.
- c. Provide the city with a report indicating the findings of the testing.
- d. For rehabilitation work in excess of \$5,000.00, the consultant shall conduct and prepare a risk assessment of the entire unit. A certified risk assessor must conduct the risk assessment.
- e. Conduct final clearance inspection to make sure the dwelling is safe for occupants. Final clearance shall ensure that all of the following items have been completed:
 - All hazard reduction work covered in the work specifications.
 - All areas where paint has been stabilized have been repainted with primer and finish coats of paint.
 - All causes of deteriorated paint have been repaired.
 - Encapsulants have been applied according to manufacturer's recommendations.
 - Friction and impact surfaces have been treated.
 - Surfaces that collect lead dust have been cleaned.

V. FISCAL IMPACT

Funds for this proposed contract amendment are included in the FY 2011/12 CDBG budget and the approved 2011-2012 Annual Action Plan under Rehabilitation Activities (Neighborhood Pride Program).

VI. EXHIBITS

1. Minutes, December 7, 2010, City Council, Item No. 10. (pg. 4)
2. First Amendment for Lead-Based Paint Inspection and Consulting Services. (pgs. 5-8)
3. Agreement dated December 7, 2010. (pgs. 9-23)

Prepared by: Keith Bennett

TO:Rev091911

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development	Public Services

Action taken by City Council	
Date _____	Action _____



**MINUTES
CARSON CITY COUNCIL
REGULAR JOINT MEETING**

DECEMBER 7, 2010

ITEM NO. (10) CONSIDER APPROVAL OF A CONSULTANT RETAINER AGREEMENT WITH BARR & CLARK, INC. TO PROVIDE LEAD-BASED PAINT INSPECTION AND CONSULTING SERVICES FOR THE RESIDENTIAL REHABILITATION PROGRAM (ECONOMIC DEVELOPMENT)

RECOMMENDATION for the City Council:

TAKE the following actions:

1. APPROVE a consultant retainer agreement with Barr & Clark, Inc., in an amount not-to-exceed \$41,025.00 for lead-based paint inspection and consulting services, for a period of one (1) year, with an option to extend the agreement for an additional one (1) year period at the discretion of the city.
2. AUTHORIZE the Mayor to execute the agreement following approval as to form by the City Attorney.

ACTION: Item No. 10 was approved on the New Business Consent Calendar on motion of Dear, seconded by Davis-Holmes and unanimously carried by the following vote:

Ayes: Mayor Dear, Mayor Pro Tem Santarina, Council Member Davis-Holmes, Council Member Gipson, and Council Member Ruiz-Raber
Noes: None
Abstain: None
Absent: None

**FIRST AMENDMENT TO CITY OF CARSON
CONSULTING SERVICES/CONSULTANT RETAINER AGREEMENT
[Lead-Based Paint Inspection and Consulting Services]**

This First Amendment to that certain Consulting Services/Consultant Retainer Agreement, dated as of December 6, 2011 (First Amendment), is made and entered into this 6th day of December, 2011, by and between the city of Carson, a municipal corporation (City), and Barr & Clark, Inc., a California corporation (Consultant).

WHEREAS, the City and Consultant previously entered into that certain "Consulting Services/Consultant Retainer Agreement for the services of a private contractor to perform inspection and project coordination tasks necessary for the completion of rehabilitation projects as part of the City's Neighborhood Pride Program " dated as of December 7, 2010 (Agreement); and

WHEREAS, the City desires to continue the services of Consultant beyond the term of such Agreement in order to perform additional services within the scope of services defined in such Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Section 2.1 of the Agreement, and Exhibit "A" thereto, are hereby amended to read, in their entirety, as follows and as attached as Exhibit "A":

"2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as *Exhibit "A"* and incorporated herein by this reference, but not exceeding the maximum contract amount of Forty-One Thousand and Twenty Five dollars (\$41,025.00) ("Contract Sum")."

Section 2. Section 5.1 of the Agreement is amended to read, in its entirety, as follows:

"5.1 Term. Unless earlier terminated in accordance with Section 5.2 below, this Agreement shall continue in full force and effect until December 7, 2012."

Section 3. Except as expressly amended by this First Amendment, all other terms, conditions, and obligations of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

[SIGNATURES ON NEXT PAGE]

EXHIBIT NO. 02



CITY:
City of Carson, a public body corporate & politic

Mayor Jim Dear

ATTEST:

City Clerk Helen S. Kawagoe

APPROVED AS TO FORM:

City Attorney

CONSULTANT:
Barr & Clark, Inc., a California corporation

By: _____
Name:
Title:

By: _____
Name
Title:

Address: 12684 Hoover Street
Garden Grove, CA 92841

[END OF SIGNATURES]



EXHIBIT "A"

COMPENSATION

For the services previously described in this Agreement, City shall, in the amounts, by the method, and at the times set forth, pay Consultant as follows:

Upon receipt, verification, and approval of Consultant's Monthly Report and Invoice, City shall reimburse Consultant for the approved amount of the invoice. The total paid to Consultant shall not exceed Forty-One Thousand Twenty-Five dollars (\$41, 025.00) by the end of the term of this Agreement. Payment shall be for eligible services related to the Neighborhood Pride Program or the Neighborhood Stabilization Program (NSP), and shall be drawn from the City's Community Development Block Grant (CDBG) Fund program allocation. Payments will be made only upon Consultant's completion of the contracted services, and utilizing the City's standard warrant register procedures.

Payment to Consultant shall be based on the following schedule as documented by submitted timesheets:

- **Combination Lead-Based Paint Inspection and Risk Assessment (including visual assessment and cost-effective treatments)** – this inspection will be in compliance with 24 CFR (Code of Federal Regulations) 35.930 (Title X), California Title 17 Regulations, and the relevant chapters of the current version of the U.S. Department of Housing and Urban Development (HUD) Guidelines. Paint testing will be performed using XRF methodology. All laboratory samples (dust and soil samples) will be analyzed for lead content by a local laboratory accredited by the American Industrial Association, the National Institute for Standards and Technology, and the California Department of Health Services.
 - **Comprehensive Lead-Based Paint Inspection/Risk Assessment – Typical Single-Family Residence: \$300.00**
 - **Comprehensive Lead-Based Paint Inspection/Risk Assessment – Typical Mobilehome: \$275.00**
 - **Limited Lead-Based Paint Inspection – Typical Single-Family Residence or Mobilehome (Interior or Exterior Only): \$225.00**

All laboratory sampling costs are included in the above pricing.

- **Lead-Based Paint Clearance (Single-Family Residence or Mobilehome)** – Conduct a lead clearance inspection and issue abatement certification in compliance with 24 CFR 35.930 (Title X) and the relevant chapters of the HUD Guidelines.
 - **Lead-Based Paint Clearance Inspection – Per job site visit: \$150.00**
 - **Laboratory samples for dust wipe or soil (typically 3 samples): \$15.00 each**
- **Discount** – if five or more inspections are ordered concurrently, a 5% discount shall apply.

Fees as indicated above shall be inclusive of all normal business overhead (i.e., costs for travel, telephone service, facsimile transmission, et cetera).

All invoices shall be payable within 30 days of presentation and verification.

Payment to the Consultant may be withheld, suspended, or terminated under the following terms:

1. If CDBG or NSP funds to the City are suspended or terminated, or if the Consultant refuses to accept additional conditions imposed by the City.
2. If Consultant fails to comply with the provisions of this Agreement.
3. If Consultant fails to comply with HUD, HCD, or City rules and regulations.
4. If this Consulting Services Agreement is terminated.

CONSULTING SERVICES/CONSULTANT RETAINER AGREEMENT
(City of Carson/Barr & Clark, Inc.)

THIS CONSULTING SERVICES/CONSULTANT RETAINER AGREEMENT (this "Agreement") is made as of December 7, 2010, by and between the City of Carson, a body corporate and politic ("City") and Barr & Clark, Inc., a California corporation ("Consultant").

RECITALS

A. City has determined that it requires the services of a private contractor to perform inspection and project coordination tasks necessary for the completion of rehabilitation projects as part of City's Neighborhood Pride Program.

B. Agency desires to retain Consultant as an independent contractor to provide such services on an as needed basis.

C. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education, and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. Consultant's Services.

A. **Scope and Level of Services.** The nature, scope, and level of the specific services to be performed by Consultant are as set forth in Exhibit A hereto and by this reference incorporated herein. Consultant shall provide such services on an as needed basis when given written instruction to do so by the Contract Administrator (as defined in Section 4 below).

B. **Time of Performance.** The services shall be performed on a timely, regular basis in accordance with the written instruction of the Contract Administrator. Time is of the essence in the performance of this Agreement.

C. **Standard of Care.** As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

D. **Compliance with Law.** Consultant shall, in the rendering of all services hereunder, comply with all applicable laws, ordinances, codes, and regulations of the Federal, state, and local governments. Consultant shall obtain and maintain a valid City of Carson business license. Without limiting the foregoing, consultant covenants that it will, and will require all of its subcontractors to, comply with all applicable Federal and state occupation, public contract, public works, safety, and health standards, laws, and regulations, including, without limitation, the prevailing wage requirements of the Federal Davis-Bacon and related Acts. Consultant hereby agrees to indemnify, defend, and hold City harmless from and against any cost,



expense, claim, charge or liability relating to or arising directly or indirectly from any breach or failure to comply with any such applicable laws or regulations.

2. Term of Agreement. This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect for a period of one (1) year unless earlier terminated pursuant to Section 14. City shall have the option to, at its discretion, extend this Agreement for one (1) additional year.

3. Compensation. City agrees to compensate Consultant for its services according to the fee and payment schedule set forth in Exhibit A. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the Maximum Amount designated on Exhibit A hereto unless specifically approved in advance, in writing, by City.

4. Representatives.

A. **Project Manager.** The Project Manager for the services required under this Agreement is hereby designated as Matt Crochet, who is a representative of Consultant and authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Consultant and for devoting sufficient time to personally supervise the services hereunder. The foregoing Project Manager may not be changed by Consultant without the express written approval of City.

B. **Contract Administrator.** The Contract Administrator and City's representative shall be the person designated as City Manager or the Economic Development General Manager of City, or in his or her absence, an individual designated in writing by the City Manager or the Economic Development General Manager of City. If no Contract Administrator is so designated, the Economic Development General Manager shall be the Contract Administrator. It shall be Consultant's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions which must be made by City to the Contract Administrator. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Administrator.

5. Standard of Performance. Consultant shall perform all work in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

6. Ownership of Work Product. All reports, documents, or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. City acknowledges the Consultant's designs and construction documents, including electronic files, as instruments of professional service.

7. Status as Independent Contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any

manner, represent that it or any of its agents are in any manner employees of City. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this section.

8. Confidentiality. Employees of Consultant, in the course of their duties, may have access to financial, accounting, and statistical data provided by City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. Upon request, all City data shall be returned to City upon the termination of this Agreement. Consultant's covenant shall survive the termination of this Agreement. This provision shall not apply to information in whatever form that comes into the public domain, nor shall it restrict Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency of other authority with proper jurisdiction, or if it is reasonably necessary for Consultant to defend itself from any suit or claim.

9. Conflict of Interest. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid representation of any matter for another person or entity which would come before City or the Carson Redevelopment Agency ("Agency") during such time as it is engaged by City pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is likely to make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained pursuant to this Agreement. Nothing in this section shall, however, preclude Consultant from accepting other engagements with Agency or City.

Notwithstanding the previous paragraph, City specifically grants Consultant permission to bid on and accept work from individual tenants or prospective tenants of rehabilitation or redevelopment projects within the boundaries of City, provided, however, that the Consultant notifies the Project Administrator prior to submission of a proposal for such work. Upon submission, the Project Administrator may take whatever action necessary to remain in compliance with the previous paragraph, including terminating Consultant's Agreement or current project or assignment for City.

10. Warranty and Representation of Non-Collusion. No official, officer, or employee of the City or Agency has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the City or Agency participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in



violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State of municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non interest" pursuant to California Government Code Sections 1091 and 1091.5. Consultant warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any Agency or City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any Agency or City official, officer, or employee, as a result or consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s), or other contact resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant: Initials ME

11. Indemnification.

A. Consultant agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Consultant, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Consultant hereunder, or arising from Consultant's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents, or employees, who are directly responsible to the City, and in connection therewith:

(i) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(ii) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents and employees harmless therefrom;

In the event the City, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

B. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or

certificate required pursuant to this Agreement. This hold harmless, indemnification, and defense provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense. Consultant agrees that Consultant's covenant under this section shall survive the termination of this Agreement.

12. Insurance.

A. **Liability Insurance.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Consultant, his/her agents, representatives, employers, or subcontractors.

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

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (2) Insurance Services Office form number CA 0001 (ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

C. **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. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general 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.

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

E. **Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) City, its officers, officials, employees, agents, and volunteers are to be covered as insureds as respects liability arising out of activities performed by or on behalf of Consultant; products and

completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant or professional services provided by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, or volunteers.

- (2) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents, or volunteers shall be excess of 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 City, its officers, officials, employees, agents, or volunteers.
- (4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to City.

F. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A, unless waived by City's Risk Manager.

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

H. **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

13. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

14. Termination.

A. City shall have the right to terminate the services of Consultant at any

time for any reason on seven (7) calendar days written notice to Consultant. In the event this Agreement is terminated by City, Consultant shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect, and Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

B. Consultant shall have the right to terminate this Agreement at any time for any reason on seven (7) calendar days written notice to City, and Consultant shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

15. Suspension. City may, in writing, order Consultant to suspend all or any part of Consultant's services under this Agreement for the convenience of City or for work stoppages beyond the control of City or Consultant. Subject to the provisions of this Agreement relating to termination, a suspension of the services does not void this Agreement.

16. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

City:

City of Carson
Economic Development Work Group
1 Civic Plaza, Suite 500
Carson, California 90745
Attention: Clifford Graves, Economic Development General Manager
Telephone: (310) 233-4800
Facsimile: (310) 233-4832

Consultant:

Barr & Clark, Inc.
12684 Hoover Street
Garden Grove, California 92841
Attention: Matt Crochet, President
Telephone: (714) 894-5700
Facsimile: (714) 894-5702

17. Nondiscrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. Consultant will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

18. Assignability; Subcontractor. Consultant shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Consultant's obligations hereunder, without the prior written consent of City, and any attempt by Consultant to so assign,

transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.

19. Compliance with Laws. Consultant shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local governments. Consultant shall obtain and maintain a valid City business license.

20. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning or the language used and shall not be construed for or against either party by reason of the authorship of this Agreement.

21. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

22. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

23. Non-Waiver of Terms, Rights and Remedies. Waiver by either party to this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

24. Attorney's Fees. In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who had drafted that portion of the Agreement.

25. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provision of any Exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.

26. Dispute Resolution. In an effort to resolve any conflicts that arise during the design and construction of the project or following the completion of the project, the City and the Consultant agree that all disputes between the parties arising out of or relating to this Agreement

or a project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

27. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated Agreement between City and Consultant. This Agreement supersedes all prior oral or written negotiations, representations, or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"City"

ATTEST:

CITY OF CARSON

By: *Helen S. Kawagoe*
City Clerk Helen Kawagoe 11-13-11

By: *Jim Dear*
Mayor Jim Dear

Approved as to form:

"Consultant"

ALESHIRE & WYNDER, LLP

BARR & CLARK, INC.

By: *W. Wynd*
City Attorney

By: *Matt Lohdy*
Its PRESIDENT

By: _____
Its _____

**EXHIBIT A
SCOPE OF WORK**

Consultant shall provide staffing and other resources as required to perform the lead-based paint and inspection services for City's Neighborhood Pride Program. The scope of services and duties shall include but not be limited to:

1. Conduct lead hazard inspection/evaluation. During the evaluation, consultant shall determine whether lead-based paint or asbestos hazards exist in the unit, and where, if any, such hazards exist.
2. Conduct paint testing of all surfaces to be disturbed during the rehabilitation process. A certified lead-based paint inspector or risk assessor must conduct testing.
3. Provide the City with a report indicating the findings of the paint testing.
4. For rehabilitation work in excess of \$5,000, the consultant shall conduct and prepare a risk assessment of the entire unit. A certified risk assessor must conduct the risk assessment.
5. Conduct final clearance inspection to make sure the dwelling is safe for its occupants. Final clearance shall assure that all of the following has been completed:
 - All hazard reduction work covered in the work specifications has been completed.
 - All areas that have been stabilized have been repainted have been repainted with primer and finish coats of paint.
 - All causes of deteriorated paint have been repaired.
 - Encapsulants have been applied according to their manufacturer's recommendations.
 - Friction and impact surfaces have been treated.
 - Surfaces that collect lead dust have been cleaned.

In connection with performance of this Agreement, the Consultant's Project Manager shall be Matt Crochet, its President.

The City's Contract Administrator shall be Clifford Graves, its Economic Development General Manager.

EXHIBIT B
COMPENSATION

For the services described in Exhibit "A" to this Agreement, City shall, in the amounts, by the method, and at the times set forth, pay Consultant as follows:

Upon receipt, verification, and approval of Consultant's Monthly Report and Invoice, City shall reimburse Consultant for the approved amount of the invoice. The total paid to Consultant shall not exceed Forty-One Thousand Twenty-Five dollars (\$41,025.00) by the end of the term of this Agreement. Payment shall be for eligible services related to the Neighborhood Pride Program or the Neighborhood Stabilization Program, and shall be drawn from City's Community Development Block Grant (CDBG) Program allocation. Payments will be made only upon Consultant's completion of the contracted services, and utilizing the City's standard warrant register procedures.

Payments to Consultant shall be based on the following schedule as documented by submitted timesheets:

- **Combination Lead-Based Paint Inspection and Risk Assessment (including visual assessment and cost effective treatments)**—This inspection will be in compliance with 24 CFR (Code of Federal Regulations) 35.930 (Title X), California Title 17 Regulations, and the relevant chapters of the current version of the HUD Guidelines. Paint testing will be performed using XRF methodology. All laboratory samples (dust and soil samples) will be analyzed for lead content by a local laboratory accredited by the American Industrial Association (AIHA), the National Institute for Standards and Technology (NVLAP), and the California Department of Health Services (ELAP).
 - **Comprehensive Lead-Based Paint Inspection/Risk Assessment—Typical Single-Family Residence: \$300.00**
 - **Comprehensive Lead-Based Paint Inspection/Risk Assessment—Typical Mobilehome: \$275.00**
 - **Limited Lead-Based Paint Inspection—Typical Single-Family Residence or Mobilehome (Interior or Exterior Only): \$225.00**All laboratory sampling costs are included in the above pricing.
- **Lead-Based Paint Clearance (Single-Family Residence or Mobilehome)**—Conduct a lead clearance inspection and issue abatement certification in compliance with 24 CFR 35.930 (Title X) and the relevant chapters of the HUD Guidelines.
 - **Lead-Based Paint Clearance Inspection—Per job site visit: \$150.00**
 - **Laboratory samples for dust wipe or soil (typically 3 samples): \$15.00 each**
- **Discount**—If five or more inspections are ordered concurrently, a 5% discount shall apply.

Fees as indicated above shall be inclusive of all normal business overhead (i. e., costs for travel, telephone service, facsimile transmission, et cetera).

All invoices shall be payable within 30 days of presentation and verification.

Payment to the Consultant may be withheld, suspended, or terminated under the following terms:

1. If CDBG or NSP funds to the City are suspended or terminated, or if the Consultant refuses to accept additional conditions imposed by the City.
2. If Consultant fails to comply with the provisions of this Agreement.
3. If Consultant fails to comply with HUD, HCD, or City rules and regulations.
4. If this Consulting Services Agreement is terminated.



EXHIBIT C

FEDERAL PROVISIONS

During the performance of this Agreement, Consultant agrees to comply with the following Federal provisions. Consultant shall comply with the requirements of Exhibit C hereto, which is incorporated herein by reference.

- (1) Executive Order 11246 requires that during the performance of this Agreement, the Consultant agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, color, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Consultant setting forth the provisions of this nondiscrimination clause.
- (2) Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U. S. C. 1701 et. seq., requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- (3) Title VI of the Civil Rights Act of 1964 provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- (4) Section 109, Title I of the Housing and Community Development Act of 1974, provides that no person shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under this Title.
- (5) The Federal Davis-Bacon and Related Acts require all contractors and subcontractors performing work on Federal construction contracts or Federally-assisted contracts in excess of \$2,000 to pay their workers on such contracts not less than the prevailing wage rates and fringe benefits for corresponding classes of workers employed on similar contracts in the area.
- (6) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual, as provided in Section 504 of the Rehabilitation Act of 1973, shall apply to any such program or activity.
- (7) Contractor agrees to retain and provide to Agency, access to any books, documents, papers, and records for audit or examination for a minimum of three (3) years after final

payment and all other pending matters relative to the performance of this contract are closed.