

**REPORT TO REDEVELOPMENT AGENCY CHAIR
AND AGENCY BOARD**

**TO THE HONORABLE REDEVELOPMENT AGENCY CHAIR
AND AGENCY BOARD:**

DATE: November 17, 2008

**SUBJECT: APPROVE AN AGREEMENT WITH ANDERSON & ASSOCIATES TO
ADMINISTER THE INCLUSIONARY HOUSING AND FIRST TIME HOME
BUYER PROGRAMS AND AUTHORIZE THE EXECUTIVE DIRECTOR TO
EXECUTE IT**

Report in Brief

The Agency Board is requested to authorize the Executive Director to execute an agreement in the amount of \$35,000 between the Concord Redevelopment Agency and Anderson & Associates to assist the Planning and Economic Development Department with planning and administering the Inclusionary Housing and First Time Home Buyer (**FTHB**) Programs. A copy of this agreement is included as Attachment 1 and the Scope of Services is Exhibit A to the Agreement.

Background

The Redevelopment Agency's Housing Program has retained consultant services to assist staff in implementing and reviewing the Single Family and Multi Family Housing programs and files. Housing staff members have been working with three consultants over the past year:

U.S. Communities to assist with compliance monitoring of Multi Family Projects;

Bay Area Homebuyer Agency (BAHBA) to assist with the First Time Home Buyer Program; and

Anderson & Associates to assist with Inclusionary and Housing First Time Home Buyer programs as further described below.

The Redevelopment Agency's Housing Program retained Anderson & Associates in May 2008 for consulting services related to the Agency's First Time Home Buyer Program. Anderson & Associates' main work effort focused on assisting with planning and administering the Inclusionary Housing and First Time Home Buyer Programs as well as loan processing.

**AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE AN AGREEMENT
WITH ANDERSON & ASSOCIATES TO ADMINISTER THE INCLUSIONARY
HOUSING AND FIRST TIME HOME BUYER PROGRAMS**

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Discussion

The Agency Board is requested to authorize the Executive Director to execute an agreement in the amount of \$35,000 between the Concord Redevelopment Agency and Anderson & Associates to assist the Planning and Economic Development Department with planning and administering the Inclusionary Housing and First Time Home Buyer Programs. This new agreement will permit Anderson & Associates to continue the work started without interruption. Specifically, Anderson & Associates' work will include:

- Preparation of, or checking, loan processes and documents for any FTHB or Inclusionary Housing Sales or resales.
- Walk clients through signing processes.
- Discuss enforcement options with Department Managers for buyers who do not document that they are still the resident.
- Assist or check the calculations on new and resale price questions.
- Script the best way to explain the program to callers and drop-ins.
- Train managers on other funding sources that can be combined with Inclusionary Housing and FTHB programs should the City wish to do that.

Fiscal Impact

The agreement will be funded from the Housing Consultant/Contract Services operating account (240 8900 1A01 63158). There is sufficient funding available in the account to cover this allocation.

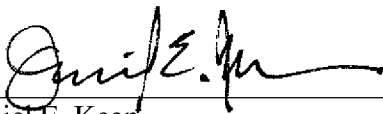
Public Contact

Anderson & Associates has been notified. The agenda has been posted.

Recommendation for Action

Staff recommends the Agency approve an agreement in the amount of \$35,000 with Anderson & Associates to assist with the administration of the Inclusionary Housing and First Time Homebuyers Program, and authorize the Executive Director to execute the agreement.

Prepared by: John Montagh
Redevelopment and Housing Manager
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Daniel E. Keen
Executive Director
dan.keen@ci.concord.ca.us

Reviewed by: James Forsberg
Director of Planning
and Economic Development
jim.forsberg@ci.concord.ca.us

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on November 17, 2008, between the City
2 of Concord Redevelopment Agency (the "AGENCY") and **Anderson & Associates, 100 Avenida**
3 **Drive, Berkeley, CA 94708** (the "CONSULTANT").

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings
5 and intentions:

6 The AGENCY desires to contract with **Anderson & Associates** and **Anderson & Associates**
7 to contract with the AGENCY for provision by **Anderson & Associates** to the AGENCY for
8 professional services as further described herein, upon the terms and conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the
10 parties herein contained, the parties hereto agree as follows:

- 11 **1. Effective Date.** The effective date of this Agreement is November 17, 2008.
- 12 **2. Services.** CONSULTANT shall provide the basic services described in detail in
13 Exhibit A, Scope of Services, attached hereto and made a part hereof.
- 14 **3. Amendment.** If authorized, CONSULTANT shall furnish additional services, which
15 are in addition to the basic services. If additional services are requested by AGENCY, this Agreement
16 may be amended, modified, or changed by the parties subject to mutual consent and in accordance
17 with the Municipal Code by execution of an addendum by authorized representatives of both parties
18 setting forth the additional scope of services to be performed, the performance time schedule, and the
19 compensation for such services.
- 20 **4. Authorized Representatives.** Authorized representatives shall represent AGENCY
21 and CONSULTANT in all matters pertaining to the services to be ordered by AGENCY or rendered
22 by CONSULTANT under this Agreement except where approval for the AGENCY is specifically
23 required by the City Council. All requirements of AGENCY pertaining to the services to be rendered
24 under this Agreement by CONSULTANT shall be submitted through these representatives and
25 AGENCY shall cooperate with CONSULTANT in all matters relating to this Agreement in such a
26 manner as will result in the performance of such work without delay.

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1 AGENCY's authorized representative is authorized to execute on behalf of AGENCY,
2 amendments to the agreement, including amendments providing for additional compensation to
3 CONSULTANT, not to exceed \$15,000, over the base contract amount, throughout the remaining
4 term of the agreement.

5 The AGENCY authorized representative is **John Montagh, Redevelopment and Housing**
6 **Manager**. The CONSULTANT authorized representative is **Janet Anderson**.

7 **5. Compensation.** CONSULTANT shall be compensated on a time and materials basis
8 for basic services rendered under Section 2, as more particularly described in Exhibit A,
9 Compensation, not to exceed \$35,000; and CONSULTANT shall be compensated for
10 additional services rendered under Section 3, as more particularly described in a fully
11 approved and executed addendum to this Agreement.

12 CONSULTANT may submit monthly statements for basic and additional services rendered. It
13 is intended that payment to CONSULTANT will be made by AGENCY within (30) days of receipt of
14 invoice.

15 **6. Term.** The term of this Agreement, subject to termination as set forth in Section 13,
16 shall be from the effective date through November 16, 2009.

17 The AGENCY's Authorized Representative may extend the term of the agreement for a period
18 not to exceed 12 months if necessary for the CONSULTANT to complete the Scope of Work or any
19 additional Scope of Work previously authorized by the AGENCY. Such Extension of time shall be in
20 writing by a duly executed addendum or amendment to this agreement.

21 **7. Standard of Performance.** CONSULTANT represents to AGENCY that the services
22 shall be performed in an expeditious manner, and with the degree of skill and care that is required by
23 current, good, and sound procedures and practices. CONSULTANT further agrees that the services
24 shall be in conformance with generally accepted professional standards prevailing at the time work is
25 performed.

26 **8. Performance by Consultant** CONSULTANT shall not employ other consultants or
27 contractors without the prior written approval of the AGENCY. CONSULTANT hereby designates
28 the CONSULTANT'S representative as the person primarily responsible for the day-to-day

1 performance of CONSULTANT'S work under this Agreement. CONSULTANT shall not change the
2 CONSULTANT'S representative without the prior consent of the AGENCY. Unless otherwise
3 expressly agreed by the AGENCY, CONSULTANT'S representative shall remain responsible for the
4 quality and timeliness of performance of the services, notwithstanding any permitted or approved
5 delegation hereunder.

6 **9. Ownership and Maintenance of Documents.** All documents furnished by
7 CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's services in respect
8 to this project. They are not intended nor represented to be suitable for reuse by others on extensions
9 of this project or on any other project. Any reuse without specific written verification and adoption by
10 CONSULTANT for the specific purposes intended will be at user's sole risk and without liability or
11 legal exposure and expenses to CONSULTANT, including attorney's fees arising out of such
12 unauthorized reuse.

13 CONSULTANT's records, documents, calculations, and all other instruments of service
14 pertaining to actual project shall be given to AGENCY at the completion of the project. The
15 AGENCY reserves the right to specify the file format that electronic document deliverables are
16 presented to the AGENCY. If agreement is terminated per Section 13, deliverables shall be provided
17 based on Section 13 requirements.

18 **10. Indemnification.** CONSULTANT agrees to defend, indemnify and hold harmless the
19 AGENCY, its officers, agents, employees and volunteers from and against any and all claims,
20 demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
21 litigation expenses) arising out of the negligent acts or omissions of CONSULTANT in the
22 performance of this Agreement.

23 **11. Insurance.** CONSULTANT shall, at its own expense, procure and maintain in full
24 force at all times during the term of this Agreement the following insurance:

25 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain
26 commercial general liability insurance with limits of no less than one million dollars
27 (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000)
28 aggregate limit for bodily injury, personal injury, and property damage.

1 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
2 insurance covering all vehicles used in the performance of this Agreement providing a five
3 hundred thousand (\$500,000) combined single limit per occurrence for bodily injury, personal
4 injury, and property damage.

5 **C. Professional Liability Coverage.** CONSULTANT shall maintain professional
6 liability insurance with coverage for all negligent errors, acts or omissions committed by
7 CONSULTANT, its agents and employees in the performance of this Agreement. The amount
8 of this insurance shall be not less than five hundred thousand dollars (\$500,000) on a claims
9 made annual aggregate basis or a combined single limit per occurrence basis.

10 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT
11 covenants that it will insure itself against liability for Workers' Compensation pursuant to the
12 provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon
13 demand of the City Council and properly authorized agents, furnish proof that Workers'
14 Compensation Insurance is being maintained by it in force and effect in accordance with the
15 California Labor Code.

16 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain
17 the following provisions:

18 (1) AGENCY, its officers, agents, employees, and volunteers are to be
19 covered as additional insureds as respects: Liability arising out of activities performed
20 by or on behalf of CONSULTANT and operations of CONSULTANT, premises
21 owned, occupied, or used by CONSULTANT. The coverage shall contain no special
22 limitations on the scope or protection afforded to AGENCY, its officers, officials,
23 employees, or volunteers.

24 (2) CONSULTANT'S insurance coverage shall be primary insurance with
25 respect to AGENCY, its officers, officials, employees, and volunteers. Any insurance,
26 risk pooling arrangement, or self-insurance maintained by AGENCY, its officers,
27 officials, employees, or volunteers shall be in excess of CONSULTANT'S insurance
28 and shall not contribute with it.

1 (3) Any failure to comply with the reporting provisions of the policy shall
2 not affect the coverage provided to the AGENCY, its officers, officials, employees, or
3 volunteers.

4 (4) The aforementioned policies shall be issued by an insurance carrier
5 having a rating of Best A-7 or better which is satisfactory to the City Attorney and
6 shall be delivered to AGENCY at the time of the execution of this Agreement or as
7 provided below. In lieu of actual delivery of such policies, a Certificate issued by the
8 insurance carrier showing such policy to be in force for the period covered by the
9 Agreement may be delivered to AGENCY. Such policies and certificates shall be in a
10 form approved by the City Attorney. Except for worker's compensation and
11 professional liability insurance, the policies mentioned in this subsection shall name
12 AGENCY as an additional insured and provide for thirty (30) days notice of
13 cancellation to AGENCY. Said policies shall not be canceled earlier than, nor the
14 amount of coverage reduced earlier than, thirty (30) days after the CITY receives
15 notices from the insured of the intent of cancellation or reduction.

16 **12. Suspension of Work.** AGENCY may, at any time, by ten (10) days' written notice,
17 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
18 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
19 performed and reimbursable expenses incurred prior to the suspension date. During the period of
20 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
21 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

22 **13. Termination.** AGENCY may terminate this Agreement for any reason upon ten (10)
23 days written notice to the other party. AGENCY may terminate the Agreement upon five (5) days
24 written notice if CONSULTANT breaches this Agreement. In the event of termination,
25 CONSULTANT shall promptly deliver to the AGENCY any reports or other written, recorded,
26 photographic, or visual materials and other deliverables prepared for the AGENCY prior to the
27 effective date of such termination. After receipt of deliverables, AGENCY will pay CONSULTANT
28 for the services performed as of the effective date of the termination.

1 **14. Compliance with Civil Rights.** During the performance of this contract,
2 CONSULTANT agrees as follows:

3 **A. Equal Employment Opportunity.** In connection with the execution of this
4 Agreement, CONSULTANT shall not discriminate against any employee or applicant for
5 employment because of race, religion, color, sex, or national origin. Such actions shall include,
6 but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer;
7 recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of
8 compensation; and selection for training including apprenticeship.

9 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all
10 federal regulations relative to nondiscrimination in federally assisted programs.

11 **C. Solicitations for Subcontractors including Procurement of Materials and**
12 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by
13 CONSULTANT for work to be performed under a subcontract including procurement of
14 materials or leases of equipment, each potential subcontractor, supplier or lessor shall be
15 notified by CONSULTANT of CONSULTANT'S obligation under this Agreement and the
16 regulations relative to nondiscrimination on the grounds of race, religion, color, sex, or
17 national origin.

18 **15. Independent Contractor.** In assuming and performing the services, CONSULTANT
19 is an independent contractor and shall not be eligible for any benefits, which the City may provide its
20 employees, except as expressly provided for in the Agreement. All persons, if any, hired by
21 CONSULTANT shall be employees or subcontractors of CONSULTANT and shall not be construed
22 as employees or agents of the City in any respect. CONSULTANT shall have responsibility for and
23 control over the means of providing services under this Agreement.

24 **16. Compliance with Laws.** CONSULTANT shall comply with all applicable Federal,
25 State of California, and local laws, rules, and regulations and shall obtain all applicable licenses and
26 permits for the conduct of its business and the performance of the services.

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1 **17. Choice of Laws.** This Agreement shall be construed and interpreted in accordance
2 with the laws of the State of California, excluding any choice of law rules which may direct the
3 application of the laws of another jurisdiction.

4 **18. Non-Waiver.** The waiver by either party of any breach of any term, covenant, or
5 condition contained in the Agreement, or any default in their performance of any obligations under the
6 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other
7 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default
8 constitute a continuing waiver of same.

9 **19. Enforceability.** In the event that any of the provisions or portions of application of
10 any of the provisions of the Agreement are held to be illegal or invalid by a court of competent
11 jurisdiction, AGENCY and CONSULTANT shall negotiate an equitable adjustment in the provisions
12 of the Agreement with a view toward effecting the purpose of the Agreement. The illegality or
13 invalidity of any of the provisions or portions of application of any of the provisions of the Agreement
14 shall not affect the legality or enforceability of the remaining provisions or portions of application of
15 any of the provisions of the Agreement.

16 **20. Integration.** The Agreement contains the entire agreement and understanding between
17 the parties as to the subject matter of this Agreement. It merges and supersedes all prior or
18 contemporaneous agreements, commitments, representation, writings, and discussions between
19 CONSULTANT and AGENCY, whether oral or written.

20 **21. Successors and Assigns.** AGENCY and CONSULTANT respectively, bind
21 themselves, their successors, assigns, and legal representatives. CONSULTANT shall not assign or
22 transfer any interest in the Agreement without the AGENCY's prior written consent, which consent
23 shall be in the AGENCY's sole discretion. Any attempted assignment or transfer in breach of this
24 provision shall be void.

25 **22. Attorney's Fees.** If either party to this Agreement commences any legal action against
26 the other party arising out of this Agreement, the prevailing party shall be entitled to recover its
27 reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and
28 attorney's fees.

1 **23. Financial Records.** Records of CONSULTANT's direct labor costs, payroll costs,
2 and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a
3 generally recognized accounting basis and made available to AGENCY if and when required.

4 **24. Notices.** All notices required hereunder shall be in writing and mailed postage prepaid
5 by Certified or Registered mail, return receipt requested, or by personal delivery to the AGENCY's
6 address as shown below, or such other places as AGENCY or CONSULTANT may, from time to
7 time, respectively, designate in a written notice given to the other. Notice shall be deemed received
8 three (3) days after the date of the mailing thereof or upon personal delivery.

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10 To AGENCY

**John Montagh, Redevelopment and Housing
Manager
Redevelopment and Housing
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3082
Fax: (925) 798-0636**

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15 To CONSULTANT

**Janet Anderson
Anderson & Associates
100 Avenida Drive
Berkeley, CA 94708
Phone: (510) 843-0288
Fax: (510) 843-8533**

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17
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19 **IN WITNESS WHEREOF**, the parties have executed this Agreement in one (1) or more
20 copies as of the date and year first written above.

21 **CONSULTANT**

**CITY OF CONCORD,
REDEVELOPMENT AGENCY**

22
23 By: _____

By: _____

24 Name: Janet Anderson
25 Title: Anderson & Associates
Address: 100 Avenida Drive
 Berkeley, CA 94708
26 Telephone: (510) 843-0288

Name: Daniel E. Keen
Title Executive Director
Address: 1950 Parkside Drive
 Concord, CA 94519
Telephone: (925) 671-3150

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APPROVED AS TO FORM:

ATTEST:

Agency Counsel

Agency Secretary

Date: _____, 200__

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 200__

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
DURING THE CURRENT FISCAL YEAR 2008/09 TO PAY THE ANTICIPATED
EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.
THE SUM OF \$35,000.00. Account Code 240 8900 1A01 63158.

Finance Director's Signature

**Anderson & Associates
Scope of Services**

Assist the Planning and Economic Development Department with planning and administering the Inclusionary Housing and First Time Home Buyer Programs. Areas of involvement include but are not limited to:

- Preparation of, or checking, loan processes and documents for any FTHB or Inclusionary Housing sales or resales.
- Walk clients through signing processes.
- Discuss enforcement options with Department Managers for buyers who do not document that they are still the resident.
- Assist or check the calculations on new and resale price questions.
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