Atascadero City Council
Staff Report – Community Development Department

Change Order for Affordable Housing
Professional Services Consultant Contract

RECOMMENDATIONS:

Council:

1. Authorize the City Manager to sign Change Order #1 in the amount of $40,000 to extend the Urban Futures Incorporated for affordable housing on-call professional services; and,

2. Authorize the Director of Administrative Services to appropriate $32,000 from the Production of Affordable Units Fund for professional services related to the Affordable Housing Assistance Strategy and related to producing affordable housing units; and,

3. Authorize the Director of Administrative Services to appropriate $8,000 from the In Lieu Low/Moderate Income Housing Fund for professional services related to the Affordable Housing Assistance Strategy and related to producing affordable housing units; and,

4. Authorize the City Manager to approve any minor additional change orders up to $10,000 for affordable housing on-call professional services.

DISCUSSION:

Background: In September 2010, the Community Redevelopment Agency of Atascadero (RDA) entered into a contract with Urban Futures Incorporated (UFI) for “Affordable Housing On-call Professional Services” with a contract amount not to exceed $39,999.00. The contract Scope of Work included analysis of options for the use of RDA Low and Moderate Income Housing Funds (LMI funds) for property acquisition and housing rehabilitation programs. Additional professional services related to affordable housing and the RDA could be added later by contract change order.

In January 2011, the Atascadero Redevelopment Agency contracted with the City of Atascadero to have the City produce affordable housing units for the Agency. This resulted in the transfer of the RDA’s LMI funds to a restricted City fund. Funds in this Production of Affordable Units Fund must be used to produce a contracted number of units for the RDA and any remaining funds at the end of the contract must be returned.
to the RDA. These funds have the same restrictions and requirements as the original RDA LMI funds.

On March 29, 2011, the City Council and Redevelopment Agency Board held a joint study session where UFI presented options for use of the LMI Housing Fund to provide affordable housing in compliance with the California Community Redevelopment Law requirements. The Council/Board identified priorities for the types of projects that would be appropriate for the contracted LMI Housing Funds, and directed staff and the consultant (UFI) to meet with affordable housing builders and non-profits to obtain proposals for projects. Over the next several months, Staff and UFI met with housing groups and reviewed proposals for consistency with State Affordable Housing Law and the Council’s/Agency’s priorities.

In June 2011, Governor Brown signed legislation that effectively dissolved redevelopment agencies statewide and requires a special payment in order to re-establish the agencies. This unprecedented and illegal action by the State significantly complicated and slowed UFI’s progress on the housing strategy. Due to UFI’s expertise on redevelopment agency issues, the City requested UFI prepare special analysis and recommendations regarding the State’s action. Together, these unexpected changes have contributed to a need to increase the original contract amount.

Analysis: As a result of the State’s redevelopment agency raid, and additional meetings and project analysis requested by the Board/Council at the March 29, 2011 meeting, UFI has performed services above the original 2010 contracted amount of $39,999. Staff recommends that the City Council authorize the City Manager to sign a change order in the amount of $40,000 to extend the UFI contract for affordable housing on-call professional services. This would provide an increase of $40,000 above the original Scope of Work for the additional meetings and project analysis which have been completed to date, and to cover any future on-call affordable housing consulting services by UFI which the City may need, as the RDA moves forward to allocate the LMI funds.

Staff recommends that the Council make a finding consistent with the City’s purchasing policy to utilize an exception to the formal bidding process. Staff believes that due to extenuating circumstances and UFI’s experience with the City of Atascadero and knowledge regarding redevelopment agency affordable housing issues, that UFI should be allowed a contract extension. The extenuating circumstances that have significantly slowed and complicated the process and led to the cost overrun on the original contract, are the State of California’s raid of Redevelopment Agency funds and the subsequent Supreme Court stay.
Staff’s recommendation is consistent with the formal bidding exception found in Section II 3.1.h.4 of the City of Atascadero Purchasing Policy listed below:

**Section II 3.1.h.4 – City of Atascadero Purchasing Policy**

When there are extenuating circumstances that would make formal bidding not the most cost effective approach. This often relates to qualitative, artistic or proprietary software/technological issues. The appropriate department head shall prepare a report to Council [Board in this Case] requesting an exemption from the formal bidding procedures.

An exception to the formal bidding process for an extension to UFI’s contract can be made as long as the Council makes the following findings in the affirmative:

1. The State of California’s raid on Redevelopment Agency funds has created a unique extenuating circumstance that created cost overruns to the original contract. Since the consultant’s work is 75% complete, formal bidding of the remaining work is not the most cost effective approach.

**FISCAL IMPACT:**

Approval of this recommendation will result in the additional expenditure of up to $40,000 in affordable housing funds.

Based on the expected services to be provided, the proposed funding allocation is as follows:

- **80% Allocation**  
  Production of Affordable Housing Units Fund (contracted escrow funds held by City. Originated from RDA Low/Moderate Income Housing Funds)  
  $32,000

- **20% Allocation**  
  In Lieu Low/Moderate Income Housing Funds  
  $8,000

The $32,000 allocation from the Production of Affordable Units Fund has an element of risk due to the on-going litigation regarding the State’s confiscation of RDA funds. If the State were to prevail and the contracted LMI funds were confiscated, then the City would be obligated to back fill these funds. If this did occur, the City’s In-Lieu Low/Moderate Income Housing Funds could be used to cover any outstanding contract obligations.
ALTERNATIVES:

1. The Council could direct staff to bid the remainder of the work.

2. The Council could defer or discontinue work on the Affordable Housing Strategy.

ATTACHMENTS:

Community Redevelopment Agency of Atascadero
Staff Report – Executive Director

Production of 24 Affordable Housing Units Contract

RECOMMENDATIONS:

Agency Board:

1. Adopt the Draft Resolution irrevocably allocating funds for the production of 24 affordable housing units; and

2. Authorize the Executive Director to execute a Financing Contract with the City of Atascadero for the production of 24 affordable housing units.

DISCUSSION:

One of the fundamental purposes of redevelopment is to increase and improve the community's supply of low and moderate income housing. In addition to being a purpose that is dictated by the State Health and Safety Code, the Agency Board has indicated, through past actions, that affordable housing is a priority.

Since the Board’s adoption of the Housing Production Plan, 183 market rate residential dwelling units have been constructed within the Redevelopment Agency Project Area, which requires that 28 low to moderate income units be provided (11 very low income units and 17 low / moderate income units). The Agency has thus far sponsored the production of four (4) very low
income units within the Project Area, which leaves a remaining obligation to produce twenty-four (24) additional affordable housing units.

Section 33334.3 of the Health and Safety Code stipulates that the Agency may use Low / Moderate Income Housing funds to pay for services provided through interagency agreements, for the purpose of producing affordable housing units. Among the Board’s past actions is the adoption of an Affordable Housing Funds Policy, which allows the City to facilitate in the financial participation of affordable housing projects. The City currently employs a staff of professionals with a full range of skills and experience to manage the development of affordable housing projects. The expertise of City staff is currently used by the Agency, as these individuals have contacts in the community and can best ensure that the appropriate developers are selected to build the required affordable housing units.

Affordable housing projects require land use entitlements, engineering, architecture, construction, financing, and legal agreements. The City currently employs planners, civil engineers, architectural plan checkers, building inspectors, finance experts, and attorneys that have the experience and capability to implement any type and size of affordable housing project. In the past 10 years, this staff has assisted in the development of the following affordable projects:

- A 19 unit very low income senior housing project at 9705 El Camino Real in partnership with the Housing Authority of San Luis Obispo (HASLO)
- A four (4) unit very low income housing project at 5440 Traffic Way in partnership with Habitat for Humanity.

Due to this level and range of experience and expertise, City staff is able to best leverage the affordable housing funds, making the City a proper entity to assist the Agency in providing affordable housing.

In order to protect funding for the production of the remaining 24 affordable housing units, the City and Agency need to formalize and document the Agency’s commitment to complete the project. Staff is recommending that the Board take the following two actions:

1. Adopt the attached draft resolution approving the expenditure of Low / Moderate Income Housing funds, approving the execution of the Financing Contract irrevocably committing a total of $5,543,800 of these Agency funds to the project.
2. Authorize the Executive Director to execute a Financing Contract with the City to provide funding for the completion of the project. This Contract commits the Agency to pay a total of $5,543,800 for the production of the remaining 24 affordable housing units. This commitment is a legally binding financing agreement with the City and once pledged, cannot be reversed. The Agency will not pay the City any additional administrative funds.

**FISCAL IMPACT:**

Expenditure of $5,383,800 in Low/Moderate Income Housing funds.
ATTACHMENTS:

1. Draft Resolution
2. Draft Financing Contract - Production of 24 Affordable Housing Units
RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF ATASCADERO, CALIFORNIA, IRREVOCABLY ALLOCATING FUNDS FOR THE PRODUCTION OF 24 AFFORDABLE HOUSING UNITS

WHEREAS, the City Council for the City of Atascadero (the “City”) has adopted the Redevelopment Plan for the Project Area (the “Redevelopment Plan”); and,

WHEREAS, the Community Redevelopment Agency of Atascadero (the “Agency”) and the Agency Board of Directors (“Board”) is vested with responsibility pursuant to the Community Redevelopment Law (Part 1 of Division 24 of Health and Safety Code of the State of California) (the “Law”) to implement the Redevelopment Plan in the Project Area; and,

WHEREAS, Sections 33000 et. seq. of the Law states that one of the fundamental purposes of redevelopment is to increase and improve the community’s supply of low and moderate income housing; and,

WHEREAS, the Law requires that 20% of the tax increment revenues received by the Agency be placed in a Low and Moderate Income Housing Fund (“LMIHF”). The LMIHF funds are to be used to increase, improve and preserve the supply of low and moderate income housing in the Project Area and within City limits (H&S 33334.2); and,

WHEREAS, The Agency must replace low and moderate income housing that is removed as a result of a redevelopment project (the replacement rule, H&S 33413(a)); and,

WHEREAS, 15% of all housing constructed in a redevelopment project area must be affordable to low and moderate-income persons and families (the inclusionary rule, H&S 33413(b)); and,

WHEREAS, the Law requires that each redevelopment agency shall adopt a Housing Production Plan, in conjunction with its Implementation Plan, which is consistent with the governing General Plan Housing Element. In addition, Sections 33413.5 and 33334.5 require replacement housing plans for any units that will be demolished within the Project Area; and,

WHEREAS, on July 6, 1999, the Agency adopted the Housing Production Plan in conjunction with its Implementation Plan, and amended it on June 10, 2008; and,

WHEREAS, on November 28, 2006, the Agency approved a funding request from Habitat for Humanity; and,

WHEREAS, on November 27, 2007, the Agency authorized execution of an agreement with Tierra West Advisors, LLC to provide affordable housing policy and strategy development consultant services; and,
WHEREAS, on November 25, 2008, the Agency adopted an Affordable Housing Funds Policy (the “Housing Policy”), allowing the City to facilitate in the financial participation of affordable housing projects; and,

WHEREAS, on December 8, 2009, the Agency appropriated $500,000 from the LMIHF for the purpose of a loan program for downtown affordable housing and related retail uses, finding the program consistent with the Housing Policy; and,

WHEREAS, on August 27, 2010, the Agency executed an agreement with Urban Futures Inc. to provide affordable housing on-call professional services; and,

WHEREAS, since the Housing Production Plan’s adoption, 183 market rate residential dwelling units have been constructed within the Redevelopment Agency Project Area, which requires that 28 low to moderate income units be provided (11 very low income units and 17 low / moderate income units); and,

WHEREAS, the Agency has sponsored the production of four (4) very low income units within the Project Area, which leaves a remaining obligation to produce twenty-four (24) additional affordable housing units (the “Project”); and,

WHEREAS, the Project conforms to the General Plan of the City; and,

WHEREAS, the Agency may enter into a binding contract (the “Contract”) with the City pursuant to which the Agency will irrevocably commit the LMIHF funds to the Project and due to the Agency’s previous commitment to the Project as described above, the Agency desires to do so; and,

WHEREAS, a staff report to the Agency at its meeting held on January 14, 2011 (the “Staff Report,” incorporated herein by reference), which sets forth fact supporting the findings made in this Resolution pursuant to the Law, has been prepared to accompany this Resolution; and,

WHEREAS, pursuant to Section 33334.3 of the Law, the Agency may use LMIHF funds to pay for services provided through interagency agreements, including usual indirect costs related thereto, for the purpose of producing affordable housing units; and,

WHEREAS, the City provides a full staff of planning, construction and finance professionals, who are experienced in the planning, financing and construction of affordable housing projects.

NOW, THEREFORE BE IT RESOLVED by the Community Redevelopment Agency of Atascadero:
1. That the Agency reaffirms its financial commitment to the Project and desires that the Project move forward in a manner that will most effectively comply with the Housing Policy and the Housing Production Plan.

2. That the Board directs the Executive Director of the Agency to execute the Contract with the City irrevocably committing LMIHF funds to the City for the Project And requiring that the LMIHF funds be held in a separate account (“LMIHF account”).

3. That the Board approves the expenditure of the LMIHF funds to enter into an agreement with the City for the production of 24 affordable housing units, of which seven (7) will be very low income units and seventeen (17) will be low / moderate income units, as set forth in the contract, between the Agency and the City and submitted to the Agency in connection with consideration of this Resolution.

4. That the Agency authorizes the Executive Director of the Agency to segregate $5,543,800 within the LMIHF accounts to be held in a separate LMIHF account upon execution of the Agreement governing the use of and accounting for the LMIHF funds.

IT IS FURTHER RESOLVED AND ORDERED that this resolution will become effective upon the effective date of approval by the Agency’s Board of Directors.

On motion by Board Member ________________ and seconded by Board Member ________________, the foregoing resolution is hereby adopted in its entirety on the following roll call vote:

AYES: 
NOES: 
ABSENT: 
ADOPTED: 

COMMUNITY REDEVELOPMENT AGENCY OF ATASCADERO
By: ____________________________
Roberta Fonzi, Chairperson

ATTEST:

Marcia McClure Torgerson, C.M.C.,
Board Secretary

APPROVED AS TO FORM:

__________________________
Brian A. Pierik, Agency General Counsel
FINANCING CONTRACT
PRODUCTION OF 24 AFFORDABLE HOUSING UNITS

THIS FINANCING CONTRACT ("Contract") is made and entered into this 14th day of January, 2011 by and between the CITY OF ATASCADERO, a general law city and municipal corporation ("City") and the COMMUNITY REDEVELOPMENT AGENCY OF ATASCADERO, a public body, corporate and politic ("Agency"). Hereinafter, City and Agency shall be referred to collectively as the "Parties" and singularly as the "Party."

RECITALS

WHEREAS, the City Council previously adopted a Redevelopment Plan (the "Redevelopment Plan") for a redevelopment project area (the "Project Area"); and,

WHEREAS, the Agency is vested with responsibility pursuant to the Community Redevelopment Law (Part I of Division 24 of Health and Safety Code of the State of California) (the "Law") to implement the Redevelopment Plan both within and without the Project Area; and,

WHEREAS, Sections 33000 et. seq. of the Law states that one of the fundamental purposes of redevelopment is to increase and improve the community’s supply of low and moderate income housing; and,

WHEREAS, the Law requires that 20% of the tax increment revenues received by the Agency be placed in a Low and Moderate Income Housing Fund ("LMIHF"). The LMIHF funds are to be used to increase, improve and preserve the supply of low and moderate income housing in the Project Area and within City limits (H&S 33334.2); and,

WHEREAS, The Agency must replace low and moderate income housing that is removed as a result of a redevelopment project (the replacement rule, H&S 33413(a)); and,

WHEREAS, 15% of all housing constructed in a redevelopment project area must be affordable to low and moderate-income persons and families (the inclusionary rule, H&S 33413(b)); and,

WHEREAS, the Law requires that each redevelopment agency shall adopt a Housing Production Plan, in conjunction with its Implementation Plan, which is consistent with the governing General Plan Housing Element. In addition, Sections 33413.5 and 33334.5 require replacement housing plans for any units that will be demolished within the Project Area; and,

WHEREAS, since the Housing Production Plan’s adoption, 183 market rate residential dwelling units have been constructed within the Redevelopment Agency Project Area, which
requires that 28 low to moderate income units be provided (11 very low income units and 17 low / moderate income units); and,

WHEREAS, the Agency has sponsored the production of four (4) very low income units within the Project Area, which leaves a remaining obligation to produce twenty-four (24) additional affordable housing units (the “Project”); and,

WHEREAS, the Project conforms to the General Plan of the City; and,

WHEREAS, the Agency is authorized by the California Redevelopment Law to enter into a binding contract with the City pursuant to which the Agency will irrevocably commit the LMIHF funds to the Project and due to the Agency’s previous commitment to the Project the Agency intends to provide funding in the amount of $5,543,800.00 (“the LMIHF Funds”) to assist the City with the cost of the Project because the Project will directly benefit the Project Area; and,

WHEREAS, the City provides a full staff of planning, construction and finance professionals, who are experienced in the planning, financing and construction of affordable housing projects; and,

WHEREAS, pursuant to Section 33334.3 of the Law, the Agency may use LMIHF funds to pay for services provided through interagency agreements, including usual indirect costs related thereto, for the purpose of producing affordable housing units; and,

WHEREAS, a duly noticed public meeting of the Agency was held on January 14, 2011 wherein the Agency adopted Resolution No. ________ making all required findings for the use of the LMIHF Funds for the Project pursuant to Section 33445.

NOW, THEREFORE, the Parties hereto state and agree as follows:

1. The purpose of this Contract is to set forth the understanding and agreement of the Parties with respect to the Agency’s commitment to fund the Project through reimbursement of the City’s share of Project costs, up to a defined amount. The contents of this Contract are intended to be as comprehensive as possible with respect to the Agency’s commitment of LMIHF Funds (as defined in paragraph 3 of this contract) to the Project yet not exhaustive with respect to additional issues and expenses that may arise relative to the development of the Project. In the event that issues and expenses occur that are not identified in this Contract, the Parties agree to work together in good faith to resolve each matter.

2. The Agency anticipates that the Project will address the goals and objectives of the Redevelopment Plan for the Project Area and will be of benefit to the Project Area by increase, improving and preserving the supply of low and moderate income housing in the Project Area and within City limits. The Agency has agreed to commit a total sum of five million five hundred forty-three thousand eight hundred dollars and no cents ($5,543,800.00) (“LMIHF Funds”) to the Project to pay for the Project’s direct benefit to the Project Area.

3. Within thirty (30) business days of the Parties executing this Contract, Agency
shall segregate the sum of five million five hundred forty-three thousand eight hundred dollars and no cents ($5,543,800.00) within the Agency’s accounts to be held in a separate account ("LMIHF Account") to pay the Project costs. The Agency Funds shall be held in the LMIHF Account until 2 months from the latest of the date the project is completed or the date of the final invoice. The City shall request reimbursement from the Agency for Project costs actually incurred and the Agency shall reimburse the City from the LMIHF Funds from the LMIHF Account.

4. In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being Parties to an agreement as defined in Section 895 of said code, the Parties hereto, as between themselves pursuant to the authorization contained in Sections 895.2 and 895.6 of said code, will each assume the full liability imposed upon it or any of its officers, agents or employees by law for personal injury, property damage or loss to third Parties caused by a negligent or wrongful act or omission of that party occurring in the performance of the Contract. To achieve the above stated purpose, each party indemnifies and holds harmless the other party for any damage, loss, cost or expense arising out of its own negligent or wrongful acts or omissions.

5. These obligations, as set forth herein, are binding on the successors, assigns or heirs, including any private or public entities, of both parties.

6. This Contract shall be governed by the laws of California and represents the entire agreement of the Parties as to the subject matter of this Contract.

IN WITNESS WHEREOF, the City and Agency have approved the foregoing FINANCING CONTRACT effective January 14, 2011, and caused the same to be executed by their duly authorized officers as set forth below.
APPROVED AS TO FORM
Community Redevelopment Agency
of Atascadero

By: ____________________________________
Brian A. Pierik, Agency General Counsel

APPROVED AS TO FORM
City of Atascadero

By: ____________________________________
Brian A. Pierik, City Attorney