

PROFESSIONAL SERVICES AGREEMENT
(City of Calabasas/ Rehab Financial Corporation)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas, a California municipal corporation (“City”), and Rehab Financial Corporation, a corporation (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Consultant will perform the services of Community Development Block Grant (CDBG) Housing Rehabilitation Escrow Services.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Consultant will diligently perform the task of Housing Rehabilitation Escrow Services as a part of the City of Calabasas’ CDBG Program as defined in the attached Exhibit “A” of this Agreement, unless otherwise directed by City.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s fee schedule to City attached hereto as Exhibit “B” and incorporated herein by this reference.
- 3.3 “Commencement Date”: July 1, 2008
- 3.4 “Expiration Date”: June 30, 2009

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date or terminated earlier in accordance with Section 17 (“Termination”) below.

Initials: (City) _____ (Contractor) _____

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Ten Thousand Dollars (\$10,000) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Belinda Exon or Barbara Wood shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the following Fee Schedule:

Initials:(City)_____ (Contractor)_____

For each City-authorized residential property, Consultant agrees to complete Account Escrow Set-up and Perform all Account Disbursement Activity at a rate of \$125.00 per account.

Total compensation under this Agreement is not to exceed \$10,000.

Total value of contract for reimbursables is not to exceed \$140,000.

- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) 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. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

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 to 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 represent that it is, or that any of its agents or employees are, in any manner employees of City.

Initials:(City)_____ (Contractor)_____

9. CONFIDENTIALITY

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 prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and related to Consultant's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to

Initials:(City)_____ (Contractor)_____

obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 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 and indemnification 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.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

Initials:(City)_____ (Contractor)_____

- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Initials:(City)_____ (Contractor)_____

11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of Calabasas
100 Civic Center Way
Calabasas, CA 91302
Attn: Robin Parker,
Administrative Services Dir.
Telephone: (818) 224-1600
Facsimile: (818) 225-7313

If to Consultant:

Rehab Financial Corporation
7372 Prince Drive, Suite 108
Huntington Beach, CA 92647
Attn: Belinda Exon, President
Telephone: (714) 843-6775
Facsimile: (714) 843-6776

Initials:(City)_____(Contractor)_____

With courtesy copy to:

Michael G. Colantuono, City
Attorney
Colantuono & Levin, PC
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

Initials:(City)_____(Contractor)_____

18. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 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, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action.

Initials:(City)_____(Contractor)_____

The venue for any litigation shall be Los Angeles County, California.

- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

19. CDBG REQUIREMENTS

During the performance of this Agreement, Consultant agrees to comply with the following federal provisions:

Initials:(City)_____ (Contractor)_____

- 19.1. Executive Order 11246 requires that during the performance of this Agreement, Consultant agrees not to discriminate against any employee or applicant for employment because of race, religion, sex color or national origin. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of Secretary of Labor. Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 19.2 Title VI of the Civil Rights Act of 1964 provides that no person will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program activity receiving federal financial assistance.
- 19.3 Section 109, Title 1 of the Housing and Community Development Act of 1974 provides that no person in the United States will, on the grounds 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 with funds made available under this title.
- 19.4 Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of age or with respect to an otherwise qualified handicapped individual, as provided in Section 504 of the Rehabilitation Act of 1973, will also apply to any such program or activity.
- 19.5 Consultant must also comply with all regulations of the Americans with Disabilities Act (ADA) of 1990 (42 USC §§ 12101 *et. seq.*).

19.5.1 Section 3 of the Housing and Community Development Act of 1968, as amended, 12 USC §§ 1701 *et. seq.*, " Compliance in the Provision of Training, Employment and Business Opportunities requires that the work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC § 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contract 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. The parties of this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR § 135, and all applicable rules and orders of the Department issued there under before executing this Agreement.

Initials:(City)_____(Contractor)_____

The parties to this Agreement certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

19.5.2 Lobbying Certification. Consultant must include the language of this certification in all subcontracts; all subcontractors must certify and disclose accordingly (Exhibit "C").

- 19.6 It is understood that each person/entity/firm who applies for a Community Development Commission contract, and as part of that process, must certify that they are familiar with the requirements of Los Angeles County Chapter 2.160 (Los Angeles County Ordinance 93-0031). Persons/entities/firms acting on behalf of the above named firm must comply with the County Code. Any person/entity/firm seeking a contract with Community Development Commission will be disqualified for such a contract; be denied the contract; be liable in civil action, if any lobbyist, lobbying firm, lobbyist employer or any other person or entity acting on behalf of the above named firm fails to comply with the provisions of the County Code.

20. LOBBYING CERTIFICATION

Consultant certifies that it has not made and will not make any payment to any person, office, or employee of any agency or member of Congress, any County official or member of the Los Angeles County Community Development Commission (CDC) in connection with the awarding of any federal contract, grant, or loan.

21. INSPECTION BY CITY AND CDC

City and the CDC shall be permitted at all reasonable times to inspect and review all relevant data and records of Consultant. Consultant agrees to retain and provide to City and CDC, access to any books, documents, papers and records for audit or examination for a minimum of four (4) years after final payment and all other pending matters relative to the performance of this contract are closed.

22. UNACCEPTABLE RISK

Consultant represents that at the time of execution hereof that neither Consultant nor its subcontractors are listed on the Debarred and Suspended Contractor's list of the U.S. Department of Housing and Urban Development.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Calabasas

“Consultant”
Rehab Financial Corporation

By: _____
Anthony M. Coroalles, City Manager

By: _____
Belinda Exon, President

Date: _____

Date: _____

Attest:

By _____
City Clerk

Date: _____

Approved as to form:

By _____
Michael G. Colantuono, City Attorney

Initials:(City)_____(Contractor)_____

EXHIBIT "A"

SCOPE OF SERVICES

As part of the City's Community Development Block Grant (CDBG) Housing Rehabilitation Program, for each City authorized residential property, Consultant will provide staffing and other resources required to perform the following:

- Establish individual escrow accounts for approved CDBG Housing Rehabilitation Program participants.
- Issue disbursements in conformance with approved payment requests within five (5) working days following City's request for payment.
- Prepare and deliver monthly activity Summary Statements for all outstanding escrow accounts within ten (10) working days of month end.
- Perform escrow account reconciliation and close-out upon full disbursement of escrow funds.
- Maintain internal records required for the timely disbursement of funds and in compliance with all applicable Federal, State and local requirements.
- Ensure adherence with all Federal, HUD, CDBG and City of Calabasas regulations and procedures.

Initials:(City)_____ (Contractor)_____

EXHIBIT "B"

FEE SCHEDULE

For each City-authorized residential property, the following compensation schedule will apply for each respective activity performed and satisfactorily completed under the terms of this Agreement.

Complete Account Escrow Set-up and Perform all Account Disbursement Activity
\$125.00 per account.

Total compensation under this Agreement is not to exceed \$10,000.

Total value of contract for reimbursables is not to exceed \$140,000.