

32728

CONSTRUCTION GRANT AGREEMENT

This Construction Grant Agreement ("Grant Agreement") is made as of July 31st, 2012, by and between **Jacquelyn McDonald**, an individual ("Owner"), and the CITY OF LONG BEACH, a municipal corporation ("City").

RECITALS

- A. This Agreement is made in connection with a grant in the amount of **\$24,776** made by City to Owner (the "Grant"), as part of City's administration of the Neighborhood Stabilization Program 2.
- B. This Agreement, and all other documents and instruments executed or to be executed by Owner in favor of City in connection with the Grant are referred to collectively in this Agreement as the "Grant Documents".
- C. The Grant is being made by City to Owner to pay for labor and materials ("Work") for the rehabilitation of a single family residence ("Improvements") located at **1909 E. Hardwick St.**, Long Beach, California (the "Property").

AGREEMENT

1. Owner's Representations and Warranties. To induce City to enter into this Agreement and the other Grant Documents and to make the Grant, Owner makes the following representations and warranties:

1.1 Capacity. Owner has the full power, authority, and legal right to execute and deliver, and to perform and observe the provisions of this Agreement and the other Grant Documents, and any other document, agreement, certificate, or instrument executed in connection with the Grant, and to carry out the contemplated transactions.

1.2 Authority and Enforceability. Owner's execution, delivery, and performance of this Agreement and the other Grant Documents, and any other document, agreement, certificate, or instrument executed in connection with the Grant have been duly authorized by all necessary corporate or other business entity action and do not and shall not require any registration with, consent, or approval of, notice to, or any action by any person, entity or Government Authority. This Agreement and the other Grant Documents, when executed and delivered by Owner, shall constitute the legal, valid, binding, and joint and several obligations of Owner enforceable in accordance with their respective terms.

1.3 Compliance with Other Instruments. The execution and delivery of this Agreement and the other Grant Documents, and compliance with their respective terms, shall not result in a breach of any of the terms or conditions of, or result in an occurrence of an event for which any holder or holders of indebtedness may declare the same due and payable under, any indenture, agreement, order, judgment, or instrument to which Owner is a party or by which Owner or its properties may be bound or affected.

1.4 Compliance with Law. The execution and delivery of this Agreement and the other Grant Documents, do not conflict with, result in a breach or default under, or create any lien or charge under any provision of any Governmental Regulation to which it is subject.

1.5 No Untrue Statements. All statements, representations, and warranties made by Owner in this Agreement or any other Grant Document and any other agreement, document, certificate, or instrument previously furnished or to be furnished by Owner to City under the Grant Documents (a) are and shall be true, correct, and complete in all material respects at the time they were made and on and as of the date of this Agreement; (b) do not and shall not contain any untrue statement of a material fact; and (c) do not and shall not omit to state a material fact necessary to make the information in them neither

misleading nor incomplete. Owner understands that all such statements, representations, and warranties shall be deemed to have been relied on by City as a material inducement to make the Grant.

2. Owner's Covenants.

2.1 The Work.

2.1.1 Contractor. Owner shall enter into the written agreement attached hereto as Exhibit "B" and incorporated herein by this reference ("Construction Contract") with **Carmody Construction** ("Contractor") for all the Work. The Construction Contract will state the total amount that Owner shall pay Contractor for the Work ("Contract Price"), and will include (a) the plans and specifications for the Work ("Plans"); (b) a written itemization of the Work and the Contract Price ("Construction Budget"); and (c) an itemized description of each segment of the Work that sets the timetable for completing the Work, and the corresponding payments for the Work ("Work and Payment Schedule"). Owner shall give City a copy of the Construction Contract. Owner shall have no other agreements for the Work. If requested by City, Contractor shall give City the name, address and telephone number of each person that has a contract with Contractor to supply materials or labor for the Work (each, a "Supplier"). Owner shall give Contractor a copy of this Agreement.

2.1.2 Permits. Owner shall obtain, and keep in force, all approvals of the Work (each, a "Permit") that are required by any federal, state, county, or local government agency (each, a "Government Authority"). Owner shall comply with all applicable laws of any Government Authority ("Government Regulations"). Contractor shall have any license required by any Government Authority. Owner shall cause Contractor to give City copies of all licenses and Permits required by Government Authorities.

2.1.3 Change Orders. Any change in the Contract Price, the Work or the Work and Payment Schedule must be in a written agreement signed by Owner and Contractor and approved by City ("Change Order").

2.1.4 Beginning and Completing the Work. Owner shall not permit any Work to begin, or materials to be furnished in connection therewith, until (a) Owner has executed all Grant Documents; and (b) City has issued a written notice to proceed to Owner and/or Contractor. The Work will begin no later than thirty (30) days after the conditions listed immediately above are satisfied. The Work will continue (without cessation for more than five (5) consecutive days) diligently and in a good and workmanlike manner in strict accordance with the Construction Contract and all Government Regulations. The Work will not violate any of the conditions, covenants or restrictions on the Property. Owner shall notify City immediately in writing if (a) the Work does not comply with the Construction Contract or this Grant Agreement; (b) any notice of lien on the Property is served on Owner or Contractor; or (c) any Government Authority issues any notice or claim relating to the Property. The Work shall be completed on or before the date which is required by the Construction Contract ("Completion Date"). City will accept the Work as completed upon Owner's satisfaction of all of the conditions in Section 3.4.8 of this Grant Agreement.

2.1.5 Inspections. City has the right to enter the Property to inspect the Work, upon reasonable notice to Owner, during normal business hours, or any other times that City arranges with Owner. City inspections are for City's benefit only. City's inspections create no liability or responsibility to Owner, Contractor, any Suppliers, or any third parties. City is not obligated to inspect the Property or the Work.

2.1.6 Owner Responsibility. Owner shall have full and sole responsibility to make sure that the Work complies with the Plans and all Government Regulations. City has no liability, obligation or responsibility for the Work. City is not liable for any failure to construct, complete, protect, or insure the Work. City is not liable for any costs of the Work. Nothing City does (including inspecting the Work or making a Payment) will be a representation or warranty by City that the Work complies with the Construction Contract, this Agreement, the Permits or any Government Regulations. Owner shall have

no right to assert any claim against City because of any claim Owner may have against Contractor or any Suppliers.

2.2 Contractor's Insurance. Owner shall obtain, or cause Contractor to obtain, and keep in full force and effect the following policies of insurance ("Contractor's Insurance") (a) a builder's all risk insurance policy, without co-insurance, in an amount not less than one hundred percent (100%) of the replacement cost of the Improvements, with the standard conditions; (b) public liability insurance with limits of liability equal to at least \$1,000,000 per occurrence and \$2,000,000 in aggregate; (c) workers' compensation insurance as required by applicable State law and otherwise as required by City; and (d) such other insurance as City may require. The Contractor's Insurance will be in force until City approves of the final Improvements.

3. Grant Administration.

3.1 General. City shall disburse the Grant proceeds ("Grant Proceeds") directly to Contractor on Owner's behalf. Owner hereby appoints City as its attorney-in-fact to make such payments, which such power is coupled with an interest and shall survive an Event of Default.

3.2 Use of the Grant Funds.

3.2.1 Payments. "Payment" means City's advance, payment or disbursement of any part of the Grant under this Agreement.

3.2.2 Grant Commitment Amount. As of the date on which all Grant Documents are fully-executed and all initial conditions to the effectiveness of the Grant are satisfied (the "Closing Date"), City commits to disburse Grant principal in the total amount of the Grant ("Grant Commitment Amount"). After the Closing Date, the Grant Commitment Amount will equal the principal amount of the Grant less the total amount of Payments made to date. Any Grant Commitment Amount that remains after all Payments have been made will be retained by City.

3.2.3 No Changes. Unless City agrees in writing first, Owner shall not change the Plans or the Construction Contract, or permit any part of any Payment to be paid except as specified in the Schedule of Payments, or in a Request for Payment.

3.3 Payments; Conditions to Payments. Each of the covenants Owner makes in this Agreement shall be considered made again as of the time City receives a request from Owner and/or Contractor for a Payment on City's standard form ("Request for Payment"). City will hold fifteen percent (15%) of each Payment for the Work ("Holdback"). City will disburse Holdback after receiving assurances from the title company that there are no liens affecting the Property as a result of the Work. In no event shall City be obligated to disburse Holdback earlier than forty-five (45) days after final Payment. Payments will be made as outlined in the Construction Contract only if all the following conditions are satisfied:

3.3.1 Plans Approved. Owner has reviewed the Plans; the Plans are satisfactory and have been approved by all Government Authorities having jurisdiction over the Property and the Work.

3.3.2 Work Completed; Invoices and Lien Waivers. The Work for which a Payment is requested has been completed in a good and workmanlike manner, and complies with the Construction Contract, the Plans, the Permits, and all Government Regulations, and City's inspector shall have prepared a written certification attesting to such facts. Contractor shall certify that all parties having lien rights for such Work performed shall have executed valid lien waivers.

3.3.3 Request for Payment. Contractor will deliver to City (a) a Request for Payment, properly completed and signed by Owner and Contractor; (b) conditional construction lien waivers from Contractor for all Work covered by the Request for Payment; and (c) all other information and supporting

documentation reasonably required by City in connection with each Payment. City may rely on Owner's statements and Contractor's statements in the Request for Payment. City does not have to verify any of that information. The funds obtained with the Request for Payment will be used to pay for the Work described in the Request for Payment.

3.3.4 Grant Commitment Amount. The Grant Commitment Amount remaining after each Payment will be enough to complete all the Work.

3.3.5 Bonds. If required by City, Owner shall have furnished, or caused Contractor to furnish, (a) a performance and payment bond equal to the total amount of the Construction Contract; and (b) a materialmen's and mechanic's payment bond, each in form and substance reasonably acceptable to Owner. Any bonds required hereunder shall be recorded or filed in accordance with California Civil Code Section 3235.

3.3.6 Completion of Improvements; Final Payment. The Work will be completed as required by this Agreement. Before the final Payment, City shall have (a) received evidence that the completed Improvements have been inspected and approved by applicable Government Authorities and a Certificate of Occupancy has been issued; (b) completed a certification by City's inspector that the Improvements have been completed substantially in accordance with the Plans; (c) received confirmation that Owner has accepted the completed Improvements; and (d) received and recorded an executed notice of completion from Owner.

3.4 City's Responsibility. The making of any Payment by City shall not constitute (a) an approval by City of the Work completed through the date of the Payment; or (b) a representation to Owner or any third party regarding deficiency or defect of the Work.

4. Default and Remedies.

4.1 Events of Default. Owner shall be in default under this Agreement and the other Grant Documents if any of the following events ("Events of Default") occurs (a) the failure of Owner to perform or comply with any non-monetary obligation hereunder or under the other Grant Documents within thirty (30) days of receiving written notice of such failure from City; (b) the failure to be true in any material respect when made of any representation or warranty of Owner contained herein or in the other Grant Documents; or (c) the existence of any other Event of Default under any of the Grant Documents.

4.2 City's Rights and Remedies. Subject to Owner's right to notice of default and right to cure the default(s), to the extent required by law, if an Event of Default occurs, City has the following rights and remedies ("Rights and Remedies"):

4.2.1 Declare a Default. City may declare this Agreement in default.

4.2.2 Terminate the Grant. City may terminate the Grant and make no further Payments hereunder.

4.2.3 Indemnity. Owner shall indemnify and shall defend and save harmless, City and City's affiliates, and the officers, directors, employees and agents of City (for the purposes of this Subsection, collectively the "City"), from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses harmless from any liability, claim, loss, cost, legal expenses, incurred by or alleged against City arising from or related to (a) the Property; (b) the Work; or (c) Owner's default under this Agreement or any of the Grant Documents.

4.2.4 City's Fees, Costs, and Expenses. Owner shall promptly pay to City all attorney's fees, costs, and other expenses paid or incurred by City in enforcing or exercising City's Rights and Remedies under this Agreement.

4.2.5 Remedies Cumulative. City may (but is not required to) exercise any or all of the rights under this Agreement. All of City's Rights and Remedies contained in this Agreement are cumulative and are in addition to any other Rights and Remedies created in any other Grant Document or existing at law or in equity.

5. Miscellaneous.

5.1 Owner's Cooperation. Owner shall, at its own cost and expense, sign any other instruments or documents, and supply any information and data that City considers necessary to accomplish the purposes of this Agreement. If, in City's opinion, a material modification of the terms of this Agreement is required, or occurs, Owner shall execute an appropriate Modification Agreement. All documents delivered to City by Owner shall become City's property.

5.2 No Waivers. If City delays in exercising or fails to exercise any of its rights under this Agreement, that delay or failure shall not constitute a waiver of any City rights or of any breach, default, or failure of condition under this Agreement. No waiver by City of any of its rights or of any such breach, default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by City.

5.3 Entire Agreement. This Agreement and the other Grant Documents are the entire understanding between City and Owner about the Grant, the Improvements, and the Work, and may not be modified, amended, or terminated except by written agreement signed by City and Owner.

5.4 Assignment. This Agreement inures to and binds the heirs, legal representatives, successors, and assigns of Owner and City; provided, however, that Owner may not assign this Agreement, or assign or delegate any of its rights or obligations, without City's prior written consent in each instance, which consent may be withheld in City's sole and absolute discretion.

5.5 Survival of Representations. Any promise Owner makes shall survive the termination of this Agreement and the repayment of the Grant.

5.6 Joint and Several Liability. If more than one person or entity is signing this Agreement as Owner, their liability under this Note shall be joint and several.

5.7 Notices. Any notice required to be provided in this Agreement shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service, marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated below in this Section or to such other address as a party may designate by written notice to the other. All notices shall be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

Owner:	Property Address
City:	City of Long Beach 100 W. Broadway, Suite 550 Long Beach, CA 90802 Attn: NSP Grant Program Administrator

5.8 No Third Party Beneficiary. This Agreement is for the sole benefit of City and Owner, and is not for the benefit of anyone else. All conditions to City's obligation to make any Payment are solely for

City's benefit. No other person or entity shall have standing to require satisfaction of those conditions or be deemed to be the beneficiary of those conditions.

5.9 Governing Law. This Agreement shall be construed and enforce able according to the laws of the State of California (the "State") for all purposes.

5.10 Time Is of the Essence. Time is of the essence with respect to all obligations of Owner under this Agreement.

5.11 Severability. If any provision of this Agreement, or the application of it to any party or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Agreement being severable in any such instance.

5.12 Exhibits. The following exhibits are attached to and a part of this Agreement.

Exhibit "B" - Construction Contract

IN WITNESS WHEREOF, Owner and City have executed and delivered this Construction Grant Agreement as of the date first written above.

"Owner"


Jacquelyn McDonald

"City"

CITY OF LONG BEACH, a municipal corporation

By: 
Amy J. Bodek
Director of Development Services

Approved as to form this 13 day of August, 2012.

ROBERT E. SHANNON, City Attorney

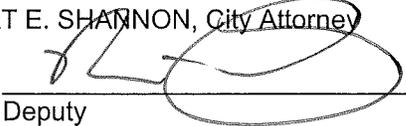
By: 
Deputy

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

TRACT#12921 VAC ST ADJ ON SW AND LOT 33

EXHIBIT B
CONSTRUCTION CONTRACT

Neighborhood Stabilization Program Rehabilitation Contract

This Neighborhood Stabilization Program Rehabilitation Contract is between the **Jacquelyn McDonald** (hereinafter "**Owner**"), and **Carmody Construction, State License No. 399097**, whose business address is **1240 Birch Tree Ct., La Habra, CA 90631** (hereinafter "**Contractor**"), who warrants to be licensed and qualified to perform the work specified herein. This Contract is for the rehabilitation of property located at **1909 E. Hardwick St., Long Beach, CA 90807**(hereinafter "**Property**").

In consideration of their mutual promises, the parties agree as follows:

Part I. Specific Terms

1. **Effective Date.** This Contract shall have no force or effect unless and until executed by Owner and Contractor, and a copy is delivered to Contractor with a Notice to Proceed date. If an executed copy of this Contract with Notice to Proceed date is not delivered to Contractor within thirty (30) calendar days, neither Owner nor Contractor shall be bound by the terms of this Contract. If, however, an executed copy of this Contract with Notice to Proceed date is delivered after that date, and Contractor subsequently performs work on, or delivers materials to the Property, both parties shall be bound by this Contract. Contractor shall not be compensated under this Contract for work commenced, or materials delivered to the Property before the Notice to Proceed date.

2. **The Contract.** This Contract consists only of Part I (Specific Terms), Part II (Standard Terms), and Attachment No. 1 entitled Work Write-up, dated **07/31/12**. This Contract shall comply with all Housing Quality Standards of the U.S. Department of Housing and Urban Development, and City of Long Beach housing and building codes, as applicable.

3. **Time For Commencement and Completion.** Contractor agrees to commence, or cause to be commenced, the actual work described in the Work Write-up within seven (7) calendar days after the Notice to Proceed date. Contractor agrees to complete, free of liens or rights of liens of contractors, mechanics, material suppliers or laborers, all work listed in Attachment No. 1 within **sixty (60) calendar days** after the Notice to Proceed date, subject to extensions approved by Owner for the period of any excusable delays (including strikes, acts of God or other reasons beyond the control of Contractor). Contractor agrees that time is of the essence of this Contract.

4. **Contract Price.** Contractor agrees to accomplish work as described in the Work Write-up in accordance with each and every term and condition of this Contract, for a total contract price of **Twenty Four Thousand Seven Hundred Seventy Six and no/100 Dollars (\$24,776.00)**.

5. **Payment.** Owner and Contractor agree that the total contract price shall be

paid in two payments in accordance with Part I, Paragraph 8. The total payment amount may be reduced, or increased for change orders specified in Part II, Paragraph 3. Owner shall not withhold payment to Contractor except for noncompliance with the terms of this Contract, and shall not request Contractor to perform work outside the scope of this Contract as a condition of receiving payment. Contractor acknowledges that it is a material breach of this Contract to request or accept payment which is in excess of the price of the Work completed.

6. **Liquidated Damages.** Owner and Contractor agree that it would either be impractical, or extremely difficult to fix actual damages in the event that Contractor fails to complete the described work within the time prescribed by this Contract. In connection therewith, Contractor agrees to pay to Owner liquidated damages of **Fifty Dollars (\$50.00)** per day for each calendar day thereafter the work is incomplete beyond the date when completion is required, so long as any such delay is not occasioned by the fault of Owner, or excused in accordance with Part II, Paragraph 17. Owner and Contractor further agree that Fifty Dollars (\$50.00) per day is a fair and reasonable estimate of such damages, and that said sum is not to be construed in any sense as a penalty. The parties further agree that said Liquidated Damages for delay shall be Owner's sole and exclusive remedy for such delay.

7. **Warranty.** Contractor warrants that all improvements, materials, hardware, and fixtures of whatever kind or nature to be installed or constructed by Contractor or Contractor's subcontractors, shall be new, of good quality, suitable for their purpose and be free from defects in workmanship, materials, or other deficiencies. This is a full warranty extending to Owner, the current property owner and subsequent owners of the Property; provided however, that the warranty set forth in this Paragraph shall apply only to deficiencies and defects about which Owner, the current property owner or subsequent owners shall have notified Contractor at the address stated above within 1 year from the date established by the final acceptance of all work performed under this Contract (Acknowledgement of Satisfactory Completion of Work), except for any longer manufacturer warranties which must be furnished to Owner. Owner, the current property owner or subsequent owners shall submit in writing to Contractor, a list of all corrections, which are covered by Contractor's warranty. Contractor shall proceed to make every attempt to have those corrections completed to the satisfaction of Owner, the current property owner or subsequent owners.

8. **Payment Schedule.**

Contractor shall be entitled to request an initial payment equal to fifty percent (50%) of the Contract price, less fifteen percent (15%) retention, when at least fifty percent (50%) of the Work to be performed hereunder is completed to the satisfaction of Owner and the City of Long Beach ("City"). Contractor shall be entitled payment for the balance of the Contract price, less when retention, when (i) all work required under this Contract is completed to Owner's and City's satisfaction and Owner has issued an Acknowledgement of Satisfactory

Completion of Work, and (ii) Owner has received unconditional lien releases from all necessary subcontractors in form and substance acceptable to Owner, and (iii) if applicable, Contractor has provided Owner with a **Standard Notice of Work Completed and Not Completed** report from a company licensed by the California Structural Pest Control Board and any work not completed by the pest control company, but recommended in the initial pest control inspection report, shall have been completed and certified by Contractor, (iv) Contractor has provided Owner with the **building permit inspection sign-off**, and (v) Contractor has submitted all manufacturer warranties and guarantees. Contractor shall be entitled to retention after forty-five (45) days have elapsed after recording of the Notice of Completion.

9. **Parties to Contract.** Owner and Contractor agree that they are the sole parties to this Contract, and are solely responsible for its performance. The parties agree that the United States Department of Housing and Urban Development, and its agents, officers, or employees, do not assume any liability or responsibility whatsoever arising out of this Contract.



Jacquelyn McDonald

7-31-12

Date



Carmody Construction

7-31-12

Date

Delivered to Contractor and Notice to Proceed given on _____

Part II. Standard Terms

1. Insurance and Bonds. Prior to execution of this Contract, Contractor shall procure and maintain the following insurance at the sole expense of Contractor for the duration of this Contract, including any extensions or renewals: A certificate of insurance, showing the Owner as the Certificate Holder, must be provided to Owner for approval. The certificate must evidence the following insurance coverage placed with an insurer admitted to write insurance in the State of California, or an authorized non-admitted insurer having a rating of or equivalent to A:VIII by A.M. Best Company:

- (a) Commercial General Liability insurance equivalent in coverage scope to ISO form CG 00 01 11 85 or CG 00 01 10 93 in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in general aggregate. Such insurance shall not exclude or limit coverage for broad form contractual liability, cross liability protection, independent contractors liability, or products and completed operations liability.
- (b) Automobile Liability insurance equivalent in scope to CA 00 01 06 92 in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage covering Auto Symbol 1 (Any Auto).
- (c) Professional Liability or Errors and Omissions Liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) per claim covering the services provided pursuant to this Contract.
- (d) Workers' Compensation and Employer's Liability insurance as required by the Labor Code of the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident.
- (e) All applicable endorsements must also be filed with Owner including, but not limited to, an additional insured endorsement to the general liability policy (equivalent in coverage to ISO form CG 20 10 11 85 or CG 20 26 11 85) naming Owner, "and its officials, employees and agents" as additional insureds.

Each insurance required hereunder shall be separately endorsed to provide that coverage shall not be canceled, non-renewed, or materially changed in coverage or limits (other than exhaustion of limits by paid claims) except after thirty (30) days prior written notice to Owner.

Each insurance policy required hereunder shall also be separately endorsed to provide that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by Owner, its officials, employees, or agents.

Contractor shall require any subcontractor that Contractor may use in the performance of this Contract to maintain insurance in compliance with the provisions of this section.

If the Contract Price exceeds \$25,000, then prior to execution of this Contract and in accordance with California Civil Code Section 3247(a), Contractor shall procure, maintain and deliver to Owner a payment bond in form and substance reasonably acceptable to Owner and effective for the duration of this Contract, at the sole expense of Contractor.

2. Assignment. Contractor agrees not to assign this Contract without written consent of Owner.

3. Change Orders. Contractor agrees **not** to make any changes or additions to the Work Write-up, or the Specifications, without prior written authorization by Owner and the City of Long Beach.

4. Permits and Codes. Contractor shall perform all work under this Contract in conformance with applicable laws, ordinances, regulations, and orders, whether or not such applicable laws, ordinance, regulations, and orders are specified in this Contract, or the attachments hereto. If any discrepancy is discovered in this Contract in relation to any such law, ordinance, regulation, or order, Contractor shall immediately notify Owner of the discrepancy. Contractor agrees to secure, and pay for all necessary permits, and licenses required for Contractor's performance of this Contract in compliance with applicable local requirements, including local building and housing codes, where applicable, whether or not specified in the Work Write-up.

5. Hold Harmless. Contractor agrees to defend, indemnify, and hold Owner and its agents, employees and officers harmless from any liability, or claim for damages because of bodily injury, death, property damage, sickness, disease, or loss, and expense arising from this Contract, including without limitation any and all claims brought by the current property owner against Owner. Contractor and each subcontractor is acting in the capacity of an independent contractor with respect to Owner. Contractor further agrees to protect, defend and indemnify Owner, and its agents, employees, and officers from any claims by laborers, subcontractors, or material suppliers for unpaid work, or labor performed, or materials supplied in connection with this Contract.

6. Eligibility. Contractor represents that it is not listed on the Disbarred and Suspended Contractor's List of The United States Department of Housing and Urban Development, or the City of Long Beach, and Contractor further agrees not to hire or utilize as a subcontractor or supplier any person or firm that is so listed.

7. Condition of Property. Contractor agrees to keep the Property broom clean, and orderly, and to remove all debris as needed during the course of the work, and upon completion of the work, in order to maintain work conditions which do not cause health or safety hazards.

8. Lead Based Paint. Contractor agrees to use **No Lead Based Paint** in

Contractor's performance of this Contract, including the performance of any subcontractor. **"Lead Based Paint"** means any paint containing more than six one-hundredths of one percent lead by weight (calculated as lead metal), in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied.

9. Termination. Contractor agrees that Owner shall have the right to terminate this Contract for convenience, effective immediately upon receipt of written notice of termination by Contractor; provided, however, that Contractor shall be paid in full for all work completed under this Contract up to and including the effective date of termination. Contractor agrees that Owner shall have the right to declare Contractor in default if Contractor fails to furnish materials, or perform work in accordance with the provisions of this Contract. In such event Owner shall be responsible for providing written notice to Contractor by registered mail of such default. If Contractor fails to remedy such default within fifteen (15) days of mailing such notice, Owner shall have the right to select one or more substitute contractors who meet the requirements of this Contract, to finish the work. If the expense of finishing the work exceeds the balance not yet paid to Contractor on this Contract, Contractor shall pay the difference to Owner within ten (10) days after Owner mails by registered mail, a written request for payment to Contractor. If the expense of finishing the work does not exceed the balance not yet paid to Contractor, Owner shall pay the difference to Contractor within thirty (30) days after satisfactory completion of all work by the substitute contractor. Owner may use all, or any portion of the unpaid balance not yet paid to Contractor, to compensate substitute contractors selected pursuant to this Paragraph, and Contractor shall have no right to object to this determination by Owner.

10. Inspection and Record Retention. The United States Government and the City of Long Beach, and their duly authorized representatives shall have the right to inspect all work performed under this Contract. Contractor and Owner, as applicable, will take all steps necessary to assure that the United States Government (including without limitation the Comptroller General of the United States), the City of Long Beach, or their duly authorized representatives are permitted to examine and inspect the Property, and all contracts, materials, equipment, payrolls, and conditions of employment pertaining to this Contract and the work to be performed hereunder, including all relevant books, documents, papers, data and records, for the purpose, among other things, of making audit, examination, excerpts and transcriptions. Contractor shall keep and maintain copies of all such contracts, books, documents, papers, data and records for a period of at least three (3) years after final payment is made by Owner to Contractor under the Contract. By such inspection, the United States Government, and the City of Long Beach, assume no responsibility for defective material, or work under this Contract, or to either party for any breach of this Contract by the other. However, the City of Long Beach may determine whether or not work by Contractor on the project is in compliance with plans, and specifications. Owner may stop the work of Contractor if necessary to prevent improper execution, and may determine the amount, quality, and fitness of the several kinds of work, and materials. Owner may reject all work and materials, which do not conform to the requirements of this Contract. Owner and Contractor shall make every effort to resolve

disagreements. In cases that cannot be resolved between Owner and Contractor, the disagreement shall be resolved pursuant to the provisions of Part II, Paragraph 22.

11. Interest of Federal or Owner Personnel. Contractor agrees that none of the following shall have any interest or benefit, direct or indirect, in this Contract:

- a. Any officer or employee of the City of Long Beach who exercises any function or responsibility in connection with administration of the Neighborhood Stabilization Program, or any member of the governing body of the City.
- b. Any member of the governing body of the locality (as defined by 24 CFR 510.4(m)).
- c. Any member of, or delegate to, the Congress of the United States.
- d. Any Resident Commissioner.
- e. Any person employed by the United States Department of Housing and Urban Development at a grade level of GS-9 or above.

12. Equal Opportunity. Contractor agrees to abide by all Federal, State or local laws and regulations relative to equal opportunity to all persons, without discrimination as to race, color, creed, religion, national origin, sex, marital status, disability or discrimination as to the receipt of any form of public assistance. On agreements of \$10,000.00 or more, Contractor agrees to abide by the following provisions of Executive Order 11246, and agrees to incorporate such language in all contracts for \$10,000.00 or more, which it may enter into in connection with this Contract. During the performance of this Contract, Contractor agrees as follows:

- a. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex 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. Contractor agrees to post in conspicuous place, available to employees and applicants for employment, notices to be provided by the municipality setting forth the provisions of this nondiscrimination clause.
- b. Contractor will in all solicitation or advertisements for employees placed, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color religion, sex or national origin.

c. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract, or understanding, a notice to be provided, advising the said labor union or workers' representative of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. Contractor 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 the Secretary of Housing and Urban Development, or pursuant thereto, and will permit access to its books, records and accounts by the Secretary of Housing and Urban Development or designee, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, relations and orders.

f. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract, or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed, and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

g. Contractor will include the portion of the sentence immediately preceding Paragraph a, and the provisions of Paragraphs a through g, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as City or the Secretary of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the litigation with a subcontractor or vendor as a result of such direction by City or the Secretary of Housing and Urban Development, Contractor may request the United States to enter into such litigation to protect the interest of the Secretary of Housing and Urban Development of the United States.

13. Anti-Kickback. Contractor and any subcontractors shall comply with the Copeland "Anti-Kickback" Act " (18 U.S.C. 874), as supplemented by 29 CFR Part 3.

14. Energy Policy and Conservation Act. Contractor and any subcontractors

shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the California energy conservation plan issued in compliance with the energy Policy and Conservation Act (Public Law 94-163, 89 stat. 871), as amended by 60 FR 19639 and 19642.

15. Copyrights and Patents. Contractor agrees that City reserves the exclusive right to seek and obtain a patent or copyright registration on any drawings, plans, specifications, inventions, data or other result arising from Contractor's performance under this Contract. By executing this Contract, Contractor assigns any ownership interest Contractor may have in any data generated to City, on behalf of Owner.

16. Job Retention or Creation. Contractor shall complete and submit to City a job retention or creation report in the form attached hereto as Exhibit "A" with each request for payment under this Contract.

17. Other Contractors. During the time for performance of work under this Contract, Owner shall not cause other contractors or workers on the portion of the Property where work is to be performed by Contractor without the permission of Contractor, except for workers performing routine property maintenance services. This restriction shall not apply if Contractor is in default under this Contract.

18. Cooperation of Owner and Current Owner. While this Contract is in force, Owner shall permit Contractor to use existing utilities such as light, heat, power and water to carry out and complete the work. Owner shall cooperate with Contractor to facilitate Contractor's performance of the work, which includes the removal and replacement of rugs, draperies, coverings, furniture, etc., as necessary.

19. Work Write-up, Specifications, and Drawings. Contractor has carefully compared and studied the Work Write-up, rehabilitation specifications, and drawings. Any part of the work, or any item not specifically set forth in the Work Write-up or drawings, but which is necessary for the proper completion of the work, and which is not specifically excluded from this Contract, shall be supplied and set in place at the expense of Contractor as though it had been shown on the drawing, or mentioned in the Work Write-up.

20. Materials and Workmanship. Except as otherwise noted, Contractor shall provide and pay for all materials, labor, tools and other items necessary to complete the work. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality.

21. Extension of Time of Completion. The time of completion of this Contract shall be extended by the number of calendar day which Contractor and subcontractor are prevented from performing work as a result of:

- a. Inclement weather.

- b. The unavailability of workers, or materials because of labor disputes.

Owner shall be informed, in writing, by Contractor as soon as possible of any suspension or delay of work.

22. Disputes to be Determined by Binding Arbitration. In the event that any dispute(s) between Contractor and Owner arises out of, or in connection with, provisions of this Contract, either one, or both, shall submit in writing the fact and nature of such dispute(s) to the other party. Within thirty (30) days of such notice, Contractor and Owner shall either resolve the dispute, or shall seek a resolution of the dispute(s) pursuant to binding arbitration pursuant to Title 9 of the California Code of Civil Procedure. The arbitration shall be conducted by an office of the American Arbitration Association located within the County of Los Angeles. Contractor and Owner agree that the arbitration decision shall be binding in any court of competent jurisdiction, and the losing party in the arbitration shall pay the cost of the arbitration and the prevailing party's attorneys' fee, and other reasonable expenses.

Attachment No. 1

Schedule of Work - Work Specification dated 07/31/12.

City of Long Beach

333 W. Ocean Blvd., Third Floor, Long Beach, CA 90802
(562) 570-6373 - (562)-570-6215 Fax

WORK SPECIFICATION- CONTRACTOR BID PROPOSAL

Property Owner:	McDonald	Inspection Date:	1/25/2012
Address of Property:	1909 E. Hardwick St.	Inspected by:	
Zip Code:	90807	Charge Point:	
Owner's Phone Number:	562-682-8910	Loan Officer	
Year Built:	1942	State Contractor License Number:	399097
Contractor:	Carmody Construction	Expiration Date:	
Address:	1240 Birch Tree Ct.	Tax ID # or Social Security #:	
	La Habra, CA 90631	Ethnicity:	W
Telephone:	714-870-4640	E-Mail:	carmodyconst@aol.com

The undersigned Contractor hereby submits a lump sum bid in the amount of: \$ 24,776.00

Acceptance of attached Work Specification and Bid Proposal

Owner		Date	7-31-12
Approver		Date	8/15/12
City of Long Beach		Date	
Contractor		Date	7-31-12
Reviewed and Approved		Date	

All work to be performed shall be in conformance with Long Beach City Codes and Ordinances. Contractor is responsible for property line designation, properly designed plans, securing building permits, certifications and paying fees, if applicable. Contractor shall verify all dimensions on the job site. Owner shall select colors and patterns of materials where applicable. All lead inspection and controls to be performed by State certified company or individual and it is the responsibility of the contractor to provide all documentation to satisfy this requirement from initial inspection through clearance.

Work categorized in priority as:

- Priority Code A – Enforced/Mandatory
- Priority Code B – Incipient Condition
- Priority Code C – Home Improvement
- Priority Code GPI – General Property Improvement

1. Contractor hereby agrees to comply with all conditions and requirements of the Bid and Contract documents. If so requested by the City of Long Beach (City) or Owner, the Contractor further agrees to submit additional information regarding the Contractor's qualifications and financial status.
 2. The City will deliver a copy of the Owner and Contractor Rehabilitation Contract containing the effective date, which shall serve as the Notice to Proceed.
 3. Contractor shall procure and maintain at Contractor's expense, for the duration of this Contract, from an insurance company that is authorized to write insurance in the State of California or that is an eligible surplus lines insurer in the State of California with a minimum rating of or equivalent to an A: VIII by A.M. Best Company, the following insurance:
 - a. Commercial general liability insurance (equivalent in coverage scope to ISO CGL CG 00 01) naming the City of Long Beach, its officials, employees, and agents as additional insureds (equivalent in coverage scope to ISO CG 20 10 11 85) from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property rising out of activities performed by or on behalf of the Contractor in an amount not less than One Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US \$2,000,000) in aggregate.
 - b. Workers' compensation coverage as required by the Labor Code of the State of California and Employer's liability insurance with minimum limits of One Million Dollars (US \$1,000,000) per accident.
 - c. Automobile liability insurance (equivalent in coverage scope to ISO CA 00 01) in an amount not less than Five Hundred Thousand Dollars (US \$500,000) combined single limit (CSL) per accident for bodily injury and property damage covering owned, non-owned, and hired automobiles.
- Any self-insurance program or self-insurance retention must be approved separately in writing by City and shall protect the City of Long Beach, its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party except after thirty (30) days prior written notice to City (ten (10) days for nonpayment of premium), and shall be primary and not contributing to any other insurance or self-insurance maintained by City.
- Any subcontractor which Contractor may use in the performance of this Contract shall be required to maintain insurance in compliance with the provisions of this section.
- Contractor shall deliver to City certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf.
- "Claims-made" policies are not acceptable unless City Risk Manager determines that "Occurrence" policies are not available in the market for the risk being insured. If a "Claims-made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days.
- Such insurance as required herein shall not be deemed to limit Contractor's liability relating to performance under this Contract. City reserves the right to require complete certified copies of all said policies at any time. Any modification or waiver to the insurance requirements herein shall be made only with the approval of City Risk Manager.
- The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification provisions of the Contract.
4. Owner shall select within "Builder's Line" (standard) quality, all colors, patterns and styles of material not already specified by this Work Specification, with exception of plumbing fixtures, which shall be in all cases white.
 5. All measurements whether supplied or not shall be verified or obtained by the contractor. Where a discrepancy of supplied measurement differs from that of the Contractor, the Contractor shall indicate their own measurement on the applicable Work Specification item and base the item bid amount on their own measurement.
 6. All work as described by this Work Specification shall be completed by the Contractor in accordance with standard building practices and shall comply with all Long Beach building Codes and Ordinances.
 7. All items whether installed or replaced shall be provided by the Contractor and be unused prior to installation. Items removed for replacement, unless specified in writing, shall become the property of the Contractor.
 8. The only additions to this Work Specification, which may be considered, are those, which are necessary due to an unforeseen condition at the time of initial inspection of this property by the City representative. Additional work items, or changes, require a fully executed "CHANGE ORDER" or "ADDENDUM" and must be approved by the City representative prior to the implementation of the requested addition or change.

1909 E. Hardwick St. - NSPII

				50 % complete	Payment	Init.	100 % complete	Payment	Init.	Paid to date	Balance Due	Ret. 15%
(11)	Priority Code A: Replaster front porch area walls and adjacent surfaces to closely match existing, and repair front porch (including steps) to provide closely match existing.	\$	1,000.00									
(12)	Priority Code A: Repair existing kitchen (side porch) landing and steps, and properly compact ground area and install concrete to complete missing/damaged adjacent to porch area.	\$	660.00									
(13)	Priority Code A: Kitchen appears to have been modified without permit. Obtain permit and provide code compliant Plumbing and electrical.	\$	1,250.00									
(14)	Priority Code A: Replace damaged kitchen undersink cabinet wood, and replace missing pipe flanges.	\$	190.00									
(15)	Priority Code A: Replace damaged kitchen ceiling light fixture with similar type.	\$	185.00									
(16)	Priority Code A: Provide proper kitchen exhaust hood ducting.	\$	320.00									
(17)	Priority Code A: Remove existing kitchen/dining flooring, repair sub-floor, and install sustainable sheet product.	\$	1,056.00									

1909 E. Hardwick St. - NSPII

(18) **Priority Code C:** Remove and replace all carpeting and pad. Install carpeting and pad per HUD specifications for single-family moderate traffic use in living room, hallways, and all bedrooms. **\$ 3,300.00**

(19) **Priority Code A:** Remove existing rear bath tub enclosure tile. Install green board and ceramic tile on walls to extend past the tub and above shower head (1 full course) **\$ 1,950.00**

(20) **Priority Code A:** Clean/repair/adjust existing floor furnace and wall furnace. **\$ 350.00**

(21) **Priority Code A:** Replace existing roof ridge cap, and repair or replace damaged eaves and fascia to closely match existing material. **\$ 950.00**

(22) **Priority Code A:** Replace damaged water heater enclosure. **\$ 325.00**

(23) **Priority Code A:** Properly repair/fill all holes/voids and prepare exterior stucco and wood surfaces using Lead Safe Work Practices. Apply paint to provide adequate coverage on all surfaces. **\$ 2,950.00**

(24) **Priority Code EC:** Replace all existing windows with Title 24 compliant vinyl retrofit windows (approximately 10). **\$ 4,250.00**

	50 % complete	Payment	Init.	100 % complete	Payment	Init.	Paid to date	Balance Due	Ret. 15%

1909 E. Hardwick St. - NSPII

(25) **Priority Code A:** Ensure plumbing is code compliant, strap plumbing lines and repair any leaks. \$ 460.00

(26) **Priority Code A:** Pull combination building permit and post on site. Provide copy of permit upon request for progress payment. \$ 550.00

PROJECT TOTAL \$ 24,776.00

	50 % complete	Payment	Init.	100 % complete	Payment	Init.	Paid to date	Balance Due	Ret. 15%

EXHIBIT "A"

JOB RETENTION AND CREATION REPORTING FORM



City of Long Beach
Neighborhood Services Bureau

NSP Jobs Survey

Thank you for completing the NSP Job Creation/Retention Survey. The goal of this survey is to assess your ability to create or retain jobs based on your recent opportunity to do business with the City of Long Beach.

Please answer the questions below to the best of your ability. If you have any questions about this survey, please contact April Apodaca at (562) 570-6611 or april.apodaca@longbeach.gov.

Company Name: Carmody Const. Co.

Type of Agreement: Contract
(i.e. Purchase Order / Contract)

Total Amount: 24,776

1. How many people (including yourself) are employed by your firm? 8+

a. How many of your employees reside in Long Beach? 0

2. Did you create any new positions in order to assist you with this project? NO

a. What type of positions were created? 0
(i.e. journeyman, administrative, professional etc.)

b. How many full-time positions? 0

c. How many part-time positions? 0

i. Estimated weekly hours worked by this/these part-time employee(s) 0

3. How long do you expect to employ any persons identified in Item 2? 0

4. Did you retain any positions in order to assist you with this project? NO
(i.e. Would you have let this/these employee(s) go if you hadn't obtained this award?)

a. What type of positions were created? 0
(i.e. journeyman, administrative, professional etc.)

b. How many full-time positions? 0

c. How many part-time positions? 0

i. Estimated weekly hours worked by this/these part-time employee(s) 0

5. How long do you expect to employ any persons identified in Item 4? N/A

Optional

If available, please provide statistics regarding the Race/Ethnicity of your employees (by percentage).

White	<u>40</u> %
Black/African American	_____ %
Asian	_____ %
American Indian/Alaskan Native	_____ %
Native Hawaiian/Other Pacific Islander	_____ %
American Islander/Alaskan Native & White	_____ %
Asian & White	_____ %
Black/African American & White	_____ %
Amer. Indian/Alaskan Native & Black/African American	_____ %
Other multi-racial	<u>60</u> %

My company is a certified **MBE/WBE/DBE** business.

(please circle)