



THE CITY OF
NOVATO
CALIFORNIA

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STAFF REPORT

MEETING

DATE: September 15, 2015

TO: City Council

FROM: Robert Brown, Community Development Director

PRESENTER: Robert Brown, Community Development Director

SUBJECT: **APPROVAL OF ACTIONS TO AUTHORIZE AMENDMENTS AND EXTENSION OF A CONTRACT WITH HELLO HOUSING FOR ADMINISTRATION OF THE CITY'S BELOW MARKET RATE HOUSING PROGRAM, INCLUDING MODIFICATION OF PROGRAM FEES**

REQUEST

Consider adopting a resolution directing the City Manager to execute a contract extension and modifications with Hello Housing for the administration of the City's Below Market Rate Housing Program, including modification of program fees.

RECOMMENDATION

Adopt resolution.

DISCUSSION

Following the termination of Redevelopment Agencies by the State of California, the City was able to retain control over housing assets of the former Redevelopment Agency in the form of deed covenants which retain the affordability of approximately 405 ownership units and 357 rental units, the great majority of which are located at Hamilton. In 2012, administration of these assets shifted from former Redevelopment Agency staff to the Marin Housing Authority on a temporary basis, until the City reclaimed the housing assets. On December 11, 2012 the City Council authorized a contract with Hello Housing to administer the City's Below Market Rate (BMR) housing program which includes the following key components:

- Managing the resale and refinancing processes for ownership units to retain their affordability (entailing marketing of units, explanation of program restrictions, coordination with realtors, loan brokers and title companies, verifying financial qualifications of applicants and purchasers, and facilitating loan transactions),
- Responding to Notices of Default, including analysis of the City's ability to purchase foreclosed units to retain affordability covenants,
- Authorizing private capital improvements,

- Monitoring units for owner occupancy, and,
- Providing education and information to owners of Below Market Rate housing including information to the HOA.

It is important to remember that prior to the elimination of redevelopment, the housing program was managed by a full-time city employee and was paid for by redevelopment housing funds. The contract with Hello Housing in 2012 was an estimate and staff anticipated needing to review and revise the contract after a few years,

During the last few years, Hello Housing has done an excellent job managing the City’s BMR program. Clear program guidelines and policies have been documented and updated. Systems and documentation are in place to ensure the program’s legal compliance, integrity, professionalism and fairness. Easy to read information and training has been provided to owners. Hello Housing has worked closely with City staff to improve systems and services for this program.

The initial contract with Hello Housing provided for a per-unit administrative cost, as well as hourly rates for initial establishment of program protocols and file/database setup. The contract provided for some offsetting program revenue based on fees charged to owners wishing to sell or refinance their units. Upon approval of the initial contract in 2012, staff estimated that the program cost to the General Fund would be up to \$72,650 per year, dependent upon the volume of unit transactions.

The attached Exhibit A projects program costs for the current and next two fiscal years. The following summary compares anticipated program costs and revenues per year:

Activity	FY 15-16	FY 16-17	FY 17-18
COSTS			
<i>Hello Housing</i>			
Fees for Service	\$ 130,000	\$ 117,000	\$ 115,000
Program Design Services	12,000	12,000	12,000
File Management (digitizing/purging)	10,000	10,000	10,000
BMR Buy-Back Services	19,500	19,500	19,500
<i>City Staff</i>			
Program Administration	\$ 21,000	\$ 21,000	\$ 21,000
BMR Buy-Backs	4,000	4,000	4,000
Litigation	10,000	10,000	10,000
TOTAL COSTS	\$ 206,500	\$ 193,500	\$ 191,500
REVENUES			
Resale Transaction Fees	\$ 30,000	\$ 30,000	\$ 30,000
Refinance Transaction Fees	6,600	6,600	6,600

Rental Monitoring Fees	48,000	48,000	48,000
Mobile Home Fees	19,000	19,000	19,000
TOTAL REVENUES	\$ 103,600	\$ 103,600	\$ 103,600
NET PROGRAM COST	\$ 102,900	\$ 89,900	\$ 87,900

The program has also generated one-time funds during the past three years from the resale of foreclosed BMR units. As the market value of units was increasing rapidly from recessionary levels, the City retained the units' affordability but was able to sell the units for an amount above their purchase price (but still within an affordable range for buyers) during the foreclosure process. The five transactions yielded net revenues to the program of \$213,379. These funds have been used to eliminate the General Fund subsidy to the program for the past two years, and will likely subsidize the program for the next year or two as well. In the budget summary above, staff has not estimated additional revenues from resales of foreclosed units since we do not anticipate a significant number of additional foreclosures in the near term, nor significant differences in purchase and sales prices, but will continue to consider the City's ability to purchase foreclosed units to retain their affordability on a case-by-case basis.

The proposed contract includes some increases in cost-based services from Hello Housing based on actual experience gained in the program administration over the past two years. There are three key areas outlined in the contract: annual BMR program management fees based on a per unit cost, fees for services performed based on individual transaction, and hourly fees for Hello Housing staff to provide consulting assistance on special projects or program development. The following are proposed changes to the contracted amounts for fees for specific services:

Activity	Previous Contract Cost	Revised Contract Cost
Refinances	\$350	\$425
Resales	\$2,500	\$3,500
New Sales	\$2,500	\$3,500
Recordation of Updated Requests for Notices of Default	n/a	\$40
Fourth Follow Up Monitoring Letter	n/a	\$25
Renovation of Buy-backs Confirmed as Vacant	n/a	\$1,000
Capital Improvements Review and Approval	n/a	\$350

FISCAL IMPACT

As discussed above, the annual net cost of administration of the housing program is projected to be approximately \$89,000 per year. Rather than a General Fund subsidy being required now, the

housing program is currently being funded through one-time program revenues due to the recent sales of foreclosed homes that the City purchased and resold to retain the units' affordability covenants.

ALTERNATIVES

1. Adopt desired revisions to the contract.
2. Direct staff to pursue contacting with an alternative administrator.
3. Direct staff to revert to an internal administration staffing model.

ATTACHMENTS

1. Resolution
2. Contract with Pricing Exhibit

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NOVATO TO CONTRACT WITH HELLO HOUSING FOR THE
ADMINISTRATION OF THE CITY’S BELOW MARKET RATE
OWNERSHIP PROGRAM

WHEREAS, the City responded to the dissolution of redevelopment agencies throughout California by retaining control over housing assets of the former Redevelopment Agency in the form of deed covenants retaining affordability of 405 ownership units and 357 rental units; and

WHEREAS, at the December 11, 2012 Council meeting, the City agreed to contract with Hello Housing to administer the City’s Below Market Rate housing program, including managing the resale and refinancing processes; and

WHEREAS, Hello Housing is a 501(c)3 nonprofit organization that focuses on creating innovating housing programs with government partners and their constituencies. Launched in 2005, Hello Housing has successfully led a number of large initiatives including a large federal grant to help stabilize neighborhoods through the purchase, “green” renovation and resale of foreclosed units to income-qualified individuals and families. Hello Housing offers a very entrepreneurial and customer focused non-profit team with a cost structure that helps minimize the impact to the City’s General Fund.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato hereby directs the City Manager to execute a three-year contract with two three-year extensions with Hello Housing (HH) based with annual and one-time costs for the administration of the City’s Below Market Rate (BMR) affordable housing program as outlined on *Exhibit A*.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 15th day of September, 2015, by the following vote, to wit:

- AYES: Councilmembers
- NOES: Councilmembers
- ABSTAIN: Councilmembers
- ABSENT: Councilmembers

Sheri Hartz, City Clerk

Approved as to form:

City Attorney of the City of Novato

DRAFT

Agreement for Hello Housing Services for BMR Program Management *City of Novato*

This Agreement (“**Agreement**”) made and entered into as of August 1, 2015, by and between Hello Housing, a Nonprofit Public Benefit Corporation, organized and existing under the laws of the State of California (“**Hello**”) and the City of Novato (“**Novato**”) relating to Novato's Below Market Rate Homeownership Program (“**BMR Program**,”). Each housing unit that is part of the Novato’s BMR Program is referred to herein as a **BMR Unit**. In consideration of the mutual promises contained herein, Hello and Novato hereby agree as follows:

1. SCOPE OF PROGRAM MANAGEMENT SERVICES.

The services provided by Hello shall include the following BMR Program management services as stated in the proposal dated July 21, 2015, attached hereto as Exhibit A, and incorporated herein by reference:

A. SALE AND RE-SALE SERVICES.

- i. Assist Novato staff when requested to provide information to prospective developers relating to Novato's affordable housing requirements and the calculation of “affordable” sales price to be applied to a general income level target.
- ii. Establish the initial for-sale BMR Unit pricing information for new BMR Units as required by the agreements set forth in paragraph 1.A.vii below pursuant to the affordability requirements established by Novato.
- iii. Calculate resale price evaluations for existing BMR Units for purposes of resale or refinance.
- iv. Advertise the BMR Program and BMR Units when appropriate and through methods deemed appropriate by Hello, such as e-mail blasts, the Hello website and/or BMR database, and/or mailers to community service providers, and/or lenders.
- v. Work with City-approved licensed real estate broker/agents to list, market, and complete the purchase and sale of BMR Units in accordance with industry standards, while following the BMR Program requirements.
- vi. For each BMR Unit, sold, transferred, refinanced or otherwise conveyed, record or cause to be recorded, as appropriate, the agreements set forth in paragraph 1.A.Vii below as appropriate.

- vii. Utilize the most current versions of the following documents, in such form as approved by the Novato, and obtain all necessary signatures thereon, in connection with all BMR Unit conveyances during the term of this Agreement:
 - 1. *Affordable Housing Covenants, Resale Restriction Agreement and Option to Purchase Agreement* (“**Resale Restriction Agreement**”);
 - 2. *Buyer’s Disclosure Statement*;
 - 3. *Promissory Note*;
 - 4. *Deed of Trust*;
 - 5. *Affordable Housing Agreement* (an agreement with the developer where applicable)
 - 6. *Notice of Affordability Restrictions*; and
 - 7. *Subordination Agreement* (where applicable)
 - 8. *Request for Notice of Default*.
- ix. Subject to availability, provide assistance to BMR Unit buyers with obtaining down payment assistance. Assistance programs may include, but are not limited to, the Mortgage Credit Certificate Program (MCC), HOME, CalHome and other programs available to eligible buyers.
- x. When a BMR Unit owner notifies Hello of owner’s intention to sell their unit, request from such owner information regarding repairs or upgrades completed to that owner’s BMR Unit and, if appropriate, adjust the sales price for such owner’s BMR Unit.
- xi. Manage applicants for BMR Unit ownership by:
 - 1. Determining applicant eligibility pursuant to criteria established in cooperation with Novato; and
 - 2. In the event of a new supply of BMR units, and at the request of Novato, operating a computer-generated lottery system to select prospective BMR Unit buyers.
- xii. Calculate and advise BMR Owner’s, real estate brokers/agents and BMR buyers of the fees applicable to sale, resale and refinance transactions, collect said fees and shall transmit or cause same to be transmitted to Novato within fifteen days of the closing of any transactions.

B. BMR PROGRAM MONITORING SERVICES.

- i. For the setup of any new BMR file, Hello shall scan key documents, consistently label and save onto a folder on Dropbox shared with Novato staff as designated by the Assistant City Manager. Hello shall input key document terms into its proprietary database to facilitate ongoing monitoring and servicing.

- ii. Hello shall perform annual monitoring of Novato's existing BMR Units to attempt to verify compliance with the Resale Restriction Agreement (e.g., continuing owner occupancy, no leasing, no refinancing or additional financing without approval, no liens, no over-encumbering, etc.) of certain existing BMR owners.
- iii. Provide annual status reports to Novato on BMR sales activity, refinancing activity, monitoring results, and other related information that is reasonably requested by Novato (e.g., BMR owner demographics, current affordability levels, issues and concerns, etc.).

C. INFORMATION AND EDUCATION.

- i. Upon request, Hello shall provide Novato, BMR Program participants, and lenders with information concerning procedures and/or restrictions regarding BMR Unit conveyance, refinancing, and determination of affordability and capital improvements.
- ii. Upon request, Hello shall provide, or cause to be provided, counseling workshops for BMR home buyers concerning credit, qualifying for a loan, loan types and terms, refinancing, fair housing, and/or HOA's. Compensation for said services shall be paid to Hello in accordance with section D.iv below.
- iii. Hello shall provide Median Household Income information to Novato and prospective developers, and provide relevant information concerning Income Limits and Median Income, the relationship between those factors, and how those factors typically are used to determine affordability.
- iv. Novato consents to Hello's sharing of certain anonymous information as part of a "National Roll-Up" of Below Market Rate homeownership data collection, funded by the Cornerstone Homeownership Innovation Partnership (CHIP). The purpose of the National Roll-Up is to collect reliable data regarding impact of Below Market Rate homeownership on low-to-moderate income families.

D. PROGRAM MANAGEMENT FEES

- i. Novato shall pay to Hello Start Up Fees in the amount of Seventy Five Dollars (\$75.00) for any new BMR Unit that is added to the BMR Program. Said Start Up Fees shall compensate Hello for the cost of scanning all BMR Program documents and establishing a database for the tracking of same. Said Start Up Fees shall be invoiced by Hello and paid on a monthly basis.
- ii. Novato shall pay Hello One Hundred Dollars (\$100.00) per BMR Unit, annually, for monitoring each BMR Unit that is in the BMR Program, which shall be due to Hello within 30 days of Novato's receipt of an invoice. Hello

shall invoice Novato once the monitoring letters are complete and a compliance report is provided to Novato. As of the effective date of this Agreement, the BMR Program in the City of Novato is comprised of 408 Units. The total number of BMR Units may be adjusted from time to time, which would adjust the annual payment that Novato is obligated to pay to Hello.

- iii. Novato shall pay Hello Two Hundred Dollars (\$200.00) per BMR Unit for performing annual monitoring for Prior Year's Non-Responder Compliance, which shall be due to Hello within 30 days of Novato's receipt of an invoice.
- iv. In addition to the annual fee set forth above, Novato shall pay to Hello the following transaction fees for each transaction that is actually completed during the term of this Agreement. Said transaction fees shall be paid net 30 days upon receipt of an invoice unless otherwise noted below.

Monitoring Letters: Fourth and subsequent monitoring letters: \$25/letter.

Sale or Resale Transactions: \$3,500.00 to be invoiced once documents are drafted and shall be paid net 30 days upon receipt, subject to close of escrow.

Capital Improvements Review: \$350.00 to be invoiced once an approval or disapproval is provided to the Homeowner.

Refinance Transactions: \$450.00 to be invoiced once refinance documents are drafted and recorded. In the event that refinance documents are drafted, but for reasons beyond Hello's control, the refinance does not close, Hello will submit an invoice to Novato which shall be paid net 30 days upon receipt. If incomplete refinances become commonplace, Hello and Novato agree to consider collecting fees from borrowers in advance of close of escrow to cover such costs.

Release Transactions: \$250.00 to be invoiced once release documents are drafted and recorded.

RNODs: Recordation of updated requests for notices of default: \$40/file.

Refinance/Resales Workshops: \$400 per workshop to be invoiced once workshop is presented.

Attendance at HOA Meetings: \$175 per meeting to be invoiced once meeting is attended.

Newsletters: Preparation and distribution of newsletter to all participating households: \$4,000 per issue.

- v. In the event Novato requests Hello to calculate affordable sales prices for other affordable developments in Novato, perform program design and analysis, policy analysis and recommendations or other special requests, Hello shall charge a rate of \$125.00/hour for the Executive Director, \$85.00/hour for the Program Director, \$75/hour for the Program Manager and \$40/hour for the Program Associate.

- vi. For the sale of one Below Market Rate unit at Walnut Meadow which is expected to generate substantial buyer interest, Hello will provide finalized City-approved pricing to the developer, coordinate with developer to obtain unit information and home renderings, create a project-specific webpage, set up a project-specific outgoing voicemail providing key details for interested buyers, prepare and manage an online pre-application to determine eligibility to participate in the lottery, hold and video tape a lottery with City representative(s) present, communicate lottery numbers to applicants, invite top ranking households to a mandatory workshop, review applications in order of waitlist until a household is qualified, coordinate property tour and purchase agreement through the developer. Novato's preferred agent will not be involved in the sales process, and the developer is not offering a commission to a buyer's agent. Hello shall charge Novato a total of 2.5% of the unit's BMR sales price with 50% due once a qualified buyer enters into a purchase agreement and advances a deposit. The balance will be due upon close of escrow.

2. ENFORCEMENT AND UNIT RETENTION SERVICES.

- A. Should Hello identify BMR Program violations by any BMR Unit owners, Hello shall promptly notify Novato and, upon Novato's request, Hello shall contact such BMR Unit owner and demand correction of their violation(s). Hello, with consent from and on behalf of Novato, will attempt to enforce the BMR Resale Restrictions Agreement to secure and preserve the BMR Unit for Novato and enforce compliance with the BMR Program, or as otherwise directed by Novato with respect to each such BMR Unit. The services performed by Hello pursuant to this sub-section A. shall be referred to as "**Enforcement Services.**"
- B. Hello shall monitor default, notice of sale and other notices relating to non-payment of existing loans relating to each BMR Unit ("**Distressed Units**"). For each Distressed Unit, Hello shall prepare a strategy plan for retention of the Distressed Unit in the BMR program and shall provide a copy of the proposed strategy plan to Novato for review and approval. A goal of the strategy plan shall be early identification and intervention in order to retain the BMR Units in the BMR Program. Upon written approval by Novato, Hello shall implement the strategy plan. The services performed by Hello to implement the strategy plan shall be referred to as "**Retention Services**".
- C. FEE TO HELLO FOR RETENTION SERVICES

Retention Services will be provided on a case-by-case basis only upon Novato's written consent pursuant hereto. Enforcement Services will be provided by an employee of Hello, and Hello will charge Novato fees as set forth in Exhibit A. Novato shall pay Hello \$3500.00 for facilitation of the City's retention of a Distressed Unit (a "Retained Unit"). In the event the unit is occupied or suspected

of being occupied, Hello shall charge Novato on an hourly basis for work related to delivering a vacant unit ready for rehabilitation (if applicable) and resale to an eligible buyer. Hello will submit detailed monthly billings to Novato reflecting the Retention Services performed. Payment is due on all billings net 30 days from the date Novato receives the invoice. No fees shall be billed to Novato in excess of the above maximum without Novato's prior written approval.

D. FEE TO HELLO FOR REHABILITATION SERVICES

Rehabilitation Services for Retained Units will be provided on a case-by-case basis only upon Novato's written consent pursuant hereto. Novato shall pay Hello a \$1000 construction management fee to prepare a rehabilitation scope of work, secure bids, award the work, and ensure rehabilitation is performed in accordance with local and state building codes with quality workmanship.

3. **BMR PROGRAM DISPUTES.**

LEGAL SERVICES IN THE EVENT OF BMR DEFAULT OPTION EVENTS.

BMR Units may be subject to legal disputes, and retaining outside legal counsel to perform services relating to certain BMR Units may become appropriate (with respect to each such BMR Unit, a "**Dispute**"). Hello will notify Novato within a reasonable period of time within which Hello learns of a Dispute. In the event Hello notifies Novato of a Dispute, Novato will determine whether Novato wishes to hire its own legal counsel to represent Novato with regard to the Dispute or whether, with Novato's prior written consent, Hello shall retain outside legal counsel, acceptable to Novato to represent Hello with respect to each Dispute. Hello and Novato will jointly manage and provide instruction to outside legal counsel. In the event of a difference between Novato and Hello regarding the management of outside legal counsel, the decision of Novato shall control. Hello shall keep Novato informed at all times with regard to any Dispute and shall forward legal counsel's advice to Novato concerning each Dispute. In the event that Hello retains outside legal counsel at Novato's request, Novato shall be responsible for reimbursement to Hello for all legal expenses plus a 10% administrative markup due to Hello.

4. **EXERCISE OF OPTION TO PURCHASE PURSUANT TO RESALE RESTRICTION AGREEMENT**

A. *Notice of Option*

In the event that pursuant to the Resale Restriction Agreement an option to purchase a BMR Unit may be exercised, Hello shall:

- i. Notify Novato in writing within five (5) working days of Hello learning that an option to purchase may be exercised with respect to a BMR Unit (the "**Notice**"); and

- ii. The Notice shall include the option-triggering event, the anticipated resale price, and any other information that may be available to Hello that will assist Novato in deciding on a course of action.
- iii. Within ten (10) working days of receipt of the Notice, Novato shall provide written instructions to Hello directing Hello as to whether to exercise the option or to take other action as identified by Novato.

B. *Exercise of Option*

If Novato requests that Hello exercise the Option, Hello shall:

- i.. Utilize the funds collected through re-sales of BMR Units within Novato, if any, to purchase the BMR Unit that is subject to the Notice; or
- ii.. Utilize funds borrowed from Novato; or
- iii. Utilize Hello's funding options, if any; provided, however, Hello shall be reimbursed by Novato such amount that Hello contributes toward the exercise of an option, which reimbursement shall occur immediately upon re-sale of the BMR Unit subject to such option or 90 days from the Hello's exercise of the Option, whichever occurs earlier.

5. **EXCESS PROCEEDS UPON RESALE & MANAGEMENT OF PROCEEDS**

A. BELOW MARKET VALUE SALE

When a BMR Unit owner wishes to sell their BMR Unit, Novato may elect to retain such BMR Unit within the BMR Program but to increase the sales price of such BMR Unit for the subsequent purchaser of that BMR Unit provided the increased sales price remains affordable within an identified designated income level. If Novato desires to increase the resale price of a BMR Unit pursuant to the immediately foregoing sentence, Novato must provide written notice to Hello within 10 days of receiving notice from Hello that a BMR Unit will become available for resale.

B. MARKET VALUE SALE

Novato may elect to release a BMR Unit from the BMR Program and its affordability and resale restrictions by directing Hello in writing to resell a BMR Unit at its market value ("**Market Value Sale**"). If Novato desires for a Market Value Sale to occur, Novato must provide written notice to Hello within 10 days of receiving notice from Hello that a BMR Unit will become available for sale.

C. EXCESS PROCEEDS

After Hello's consummation of a sale pursuant to Sections 5.A. or 5.B, above, Hello shall transmit or cause to be transmitted to Novato the excess proceeds from said sale as identified in the Resale Restriction Agreement.

6. RECORDS RETENTION.

Hello shall retain electronic copies of application materials related to unit sales, resales, and refinances in a secure PDF/A format. Hard copies of application materials shall be returned to the City following conclusion of the transactions, and subsequent destruction of documents will comply with the City's Records Retention Schedule and be approved by City staff. Hello Housing will take direction from City staff regarding any future changes or adjustments with records retention of housing records that may need to occur.

7. NOVATO RESPONSIBILITIES.

Novato shall:

- A. Execute and, if appropriate, record documents that are appropriate or necessary for the operation of the BMR Program and performance of this Agreement and transactions contemplated hereby. Novato may, but is not required to, delegate to Hello the authority to execute on behalf of Novato the documents identified in 1. A hereof;
- B. Communicate with Hello quarterly, including, but not limited to, meeting with Hello on an annual basis to review the asset management portfolio and the services;
- C. Assess and pay fees due to Hello as required by this Agreement. The invoiced fees and related expenses shall be paid by Novato within thirty (30) days of Hello's submission of billings. Novato further agrees to assume and be solely responsible for all and any payment for legal services performed on Novato's and Hello's behalf per this Agreement.
- D. Provide, or cause to be provided, access to Hello to any and all Novato information and documentation necessary for the Hello to perform pursuant to this Agreement, including but not limited to, documents recorded by Novato.

8. BMR RENTAL PROGRAM MONITORING.

- A. Hello may, at the mutual agreement of Novato and Hello, provide monitoring services for Novato's BMR rental units for an additional fee. Monitoring services include review of Tenant Income Certifications and Certificates of Continuing Compliance provided by a property management company. Hello will provide these services upon Novato's written request to provide rental monitoring services and Hello's written acceptance of Novato's request.

- B. In connection with these monitoring services, Hello has the capability and expertise to recalculate a schedule of maximum allowable BMR rents each time HUD publishes a revised Area Median Income. Utility allowances would also be revised at the same time based on the current Section 8 Housing Assistance Payment Program schedule of utility allowances determined by Hello.
- C. The fee for the performance of rental monitoring will be determined based upon size of property and specific scope of work and shall be agreed upon by the parties hereto in advance of the provisions of said services. Said fee shall be set forth in an amendment to this Agreement.

9. TERM OF AGREEMENT

- A. Regardless of the term of the Resale Restriction Agreements, the term of this Agreement shall be for three (3) years from the date of this Agreement unless extended by the mutual agreement of the parties or earlier terminated in accordance with the terms hereof. A total of two (2) three-year extensions of the contract are authorized and may be granted based on performance of the contractor.
- B. Notwithstanding the Term hereof, Novato may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Hello of the services required. Notice of termination of this Agreement shall be given in writing to Hello, and shall be sufficient and complete when same is deposited in the United States mail postage prepaid and certified, addressed as set forth in this Agreement. The Agreement shall be terminated thirty (30) days after receipt of the Notice of Termination by Hello. If Novato should terminate this Agreement, Hello shall be compensated for all work satisfactorily performed prior to time of receipt of termination notice, and shall be compensated for materials ordered by Hello prior to receipt of notice of termination whether or not such materials have actually been delivered, provided that the Hello is not able to cancel such orders for materials. Compensation for Hello in the event of termination shall be determined by the City Manager. In the event that this Agreement is terminated pursuant to this Paragraph, Hello shall not be entitled to any additional compensation over that provided herein; nor shall Hello be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by Novato pursuant hereto. Hello may terminate this Agreement upon thirty (30) days written notice to Novato only for good cause. Hello's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination, all notes, computations, documents, or other data, whether complete or not, produced through the time of Novato's last payment shall be relinquished to Novato.
- C. Should Hello fail to perform any of its obligations hereunder, within the time and

in the manner provided or otherwise violate any of the terms of this Agreement, Novato may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination. In such event, Hello shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by Novato by virtue of Hello's breach of this Agreement.

10. MISCELLANEOUS

- A. The status of Hello is that of independent contractor operating having control of its work and the manner in which it is performed. Hello is not considered to be an officer, an employee, or an agent of Novato. Hello retains all rights of approval and discretion with respect to the undertakings contemplated by this Agreement except as specifically directed by Novato.
- B. Hello agrees that it has not employed or retained any company or person, other than a bona fide employee working solely for Hello, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Hello, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Novato shall have the right to annul and cancel this Agreement without liability of any sort and/or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- C. All reports, drawings, calculations, plans, specifications, and other documents prepared or obtained pursuant to the terms of this Agreement shall be endorsed by Hello and delivered to and become the property of and all rights thereto shall be assigned to Novato. In addition, data prepared or obtained under this Agreement shall be made available, upon request, to Novato.
- D. Hello shall provide properly skilled professional and technical personnel to perform all services under this contract. Hello shall not engage the services of any person or persons now employed by the City of Novato, except with the written permission of Novato. Except as otherwise herein provided, Hello shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of Novato. In the event that Novato, in writing, approves any assignment or subletting of this Agreement or the retention of subconsultants by Hello, Hello shall provide to Novato copies of each and every subconsultant contract prior to the execution thereof by Hello and subconsultant.
- E. In the event Hello performs inspection services, Novato or authorized representatives of Novato shall have the right to inspect the work of such services whenever such representatives may deem such inspection to be desirable or

necessary. Inspections by Novato do not in any way relieve or minimize the responsibility of Hello to conduct the inspections Hello has expressly agreed to perform pursuant to this agreement. Hello shall be solely liable for said inspections performed by Hello.

- F. Hello and its sub-consultants shall keep and maintain full and complete documentation and accounting records, including all records, employees' time sheets, and correspondence pertaining to the Project, and make such documents and records available for review and/or audit evaluation by representative of Novato at all reasonable times during the contract period and for at least four (4) years from the date of final payment hereunder and upon request, copies of pertinent reports and correspondence shall be furnished for the files of Novato. Prior to the destruction of any documentation, accounting or records relating to the Project, Hello shall be required to obtain the advance written approval of Novato.
- G. Hello and Hello's work and work product shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment and housing because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.
- H. Novato has relied upon the professional ability and training of Hello as a material inducement to enter into this Agreement. Hello shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Hello's work by Novato shall not operate as a waiver or release. Hello represents and warrants to Novato that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Hello to practice its profession, and (b) it shall, at its sole cost, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Hello to practice its profession. Hello shall indemnify and hold harmless the Novato from and against any and all claims or expenses caused or occasioned directly or indirectly by Hello's failure to so perform.
- I. Hello shall defend, indemnify, save, and hold harmless Novato and its officials, officers, employees and agents from any and all claims, costs and liability for any damages, sickness, death, or injury to person(s) or property, including without limitation all consequential damages, from any cause whatsoever arising directly or indirectly from, or connected with the operations or services of Hello or its agents, servants, employees or subcontractors hereunder, save and except claims or litigation arising from the sole negligence or sole willful misconduct of Novato or its officers or employees. Hello shall reimburse Novato for any expenditures, including reasonable attorneys' fees, that Novato makes by reason of the matters

that are the subject of this indemnification, and if requested by Novato, Hello shall defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of Hello. Novato shall reimburse Hello for any expenditures, including reasonable attorneys' fees, if requested by Hello, resulting from claims or litigation arising through the sole negligence or sole willful misconduct of Novato or its officers or employees.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Hello under Workers' compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by Hello. The indemnification provisions of this paragraph shall survive termination of this Agreement.

J. Without limiting Hello's indemnification provided hereunder, Hello shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the Novato, the following policies of insurance with insurers with a Best rating of no less than A:X111:

a. Workers' Compensation insurance to cover its employees, and Hello shall require all subconsultants similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subconsultants' employees.

All such Worker's Compensation insurance shall include the following endorsement language: "All rights of subrogation are hereby waived against Novato, its officers and employees when acting within the scope of their appointment or employment."

b. Commercial general liability insurance including personal injury and property damage insurance for all activities of Hello and its subconsultants arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, X, C, U hazards, subcontractors named as additional insureds (inapplicable if no subcontractors or subconsultants), vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than \$1 million dollars combined, single limit personal injury and property damage for each occurrence. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by Novato. Each such policy shall be endorsed with the following language:

(1) The City of Novato is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the

contract.

(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(3) The insurance provided herein is primary and no insurance held or owned by the City of Novato shall be called upon to contribute to a loss.

c. Professional liability, errors and omissions insurance in an amount not less than \$1 million dollars. The professional liability insurance policy shall be endorsed with a provision stating that it may not be canceled without first giving thirty (30) days prior written notice to Novato. The professional liability policy shall be written on an occurrence policy basis to cover any professional liability, errors or omissions made during the term of the policy. In the event Hello's policy is a "claims made" policy only covering those claims made during the policy period, then Hello agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.

(1) Sub Consultants providing professional services under this agreement shall be added to Hello's policy as additional insured, or shall provide evidence of their own professional liability insurance which is acceptable to the Novato City Attorney.

d. Hello shall submit to Novato certificates of insurance and endorsements, in a form acceptable to Novato evidencing its required insurance signed by the insurance agent and companies named thereon. Any deductible or self-insured retentions must be declared to and approved by Novato. At the option of Novato insurer shall reduce or eliminate such deductible or self-insured retention as respects Novato, its officers and employees or Hello shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.

K. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.

L. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a repudiation of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future

performance.

- M. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Marin.
- N. In the event either party to this Agreement brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to attorney's and witness fees as well as other costs.
- O. Time is of the essence in the completion of the work Hello is required to perform hereunder and in each of the provisions of this Agreement.
- P. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by all parties to this Agreement. Failure to insist upon strict compliance with any term or provision of this Agreement will not be deemed to be a waiver of any rights under a subsequent act or failure to act. This Agreement specifically supersedes all prior agreements between the parties.
- Q. The parties to this Agreement have been represented by counsel in the negotiation and preparation of this Agreement, and this Agreement will be construed according to its fair language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement.
- R. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile or PDF copies of signed signature pages shall be binding originals.
- S. In the event that for any reason one or more of the provisions of this Agreement or its or their application to any person or circumstance is held to be invalid, illegal, or unenforceable in any respect or to any extent, such provisions will, nevertheless, remain valid, legal, and enforceable in all other respects and to such extent as may be permissible, and, in addition, any such invalidity, illegality, or unenforceability will not affect any other provision hereof, but this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- T. NOTICES

Any notice or communication required or permitted under this Agreement must be sent by e-mail (provided delivery is confirmed) or U.S. Mail (certified only) return receipt requested pursuant to the addresses set forth immediately below, or at such other addresses as shall be designated in writing by either party to the other in accordance with this Section. Such notice will be deemed to be given when received.

Hello: Hello Housing
Attn: Executive Director
1242 Market Street, 3rd Floor
San Francisco, CA 94102

Novato: City of Novato
Attention: City Clerk
922 Machin Avenue
Novato, CA 94947

IN WITNESS WHEREOF, the Hello and Novato have executed this Agreement as of the date first written above. The undersigned represent and warrant that he/ she has full power and authorization to enter into this Agreement and to bind each other in accordance with its terms.

Novato:

Michael Frank, City Manager

Date

Hello Housing:

Mardie Oakes, Executive Director

Date

Exhibit "A"

Estimated Costs by Fiscal Year

Volume Assumptions	Projected	Projected	Projected
	Fiscal Year 2015-2016	Fiscal Year 2016-2017	Fiscal Year 2017-2018
Number of BMR Units in the Portfolio	408	409	408
Prior Year Nonresponders in the Portfolio	36	30	24
Number of Refinances per Year	18	12	8
Number of Resales per Year	16	16	16
Number of New Sales (Walnut Meadow)	1	0	0
Newsletters (Spring and Fall)	2	2	2
Workshops	2	2	2
HOA Meetings	1	1	1
Number of Releases from the Program per Year	0	0	0
Capital Improvement Approval Requests	8	9	10
Buy-Backs	1	1	1

Fees for Basic Services	Rates	Fiscal Year	Fiscal Year	Fiscal Year
		2015-2016	2016-2017	2017-2018
Commitment Fee (due at contract execution)	\$2500 one time fee	-	-	-
One-Time Set Up Costs	\$75 per file	-	-	-
One-Time Recordation of Updated Requests for Notices of Default	\$40 per file	240	-	-
Annual Compliance Monitoring (up to three letters + report)	\$100 per file	37,200	37,900	38,400
Prior Year's Non-Responder Compliance	\$200 per file	7,200	6,000	4,800
Refinances	\$450 per file	8,100	5,400	3,600
Resales	\$3500 per file	56,000	56,000	56,000
New Sales (Walnut Meadow assuming a \$375K sales price)	2.5% of sales price	9,375	-	-
Newsletters (Spring and Fall)	\$4000 per letter	8,000	8,000	8,000
Workshops	\$400 per workshop	800	800	800
HOA Meetings	\$175 per meeting	175	175	175
Releases	\$250 per file	-	-	-
Capital Improvements Review, Deprecation Schedules & Approvals	\$350 per request	2,800	3,150	3,500
		129,890	117,425	115,275

Program Design & Analysis (hourly)	Fiscal Year	Fiscal Year	Fiscal Year
	2015-2016	2016-2017	2017-2018
Owner Compliance, Resale Policy & Procedures, Policy Exceptions, Evictions, Misc. Requests	12,000	12,000	12,000
	12,000	12,000	12,000

BMR Buy-Back Activities	Fiscal Year	Fiscal Year	Fiscal Year
	2015-2016	2016-2017	2017-2018
City Buy-Backs (starts at Notice of Trustee's Sale)	\$ 3,500	\$ 3,500	\$ 3,500
Renovation of Buy-backs Confirmed as Vacant	\$ 1,000	\$ 1,000	\$ 1,000
	\$ 4,500	\$ 4,500	\$ 4,500

Total Fees to Hello Housing (not including reimbursibles)	\$ 146,390	\$ 133,925	\$ 131,775
<i>Reimbursibles (primarily pass through of rehab costs for buy-backs)</i>	\$ 15,000	\$ 15,000	\$ 15,000
Total Fees to Hello Housing plus Reimbursibles	\$ 161,390	\$ 148,925	\$ 146,775

Hourly Rates	
Executive Director (program design, analysis, strategy, review of legal documents)	\$ 125
Management Level Input (Violation research, defaults, short sale negotiations)	\$ 85
Admin Level Input (data collection)	\$ 40

Prepared by Hello Housing July 21, 2015