

REQUEST FOR COUNCIL ACTION

SUBJECT: Community Development Block Grant Housing Consulting Services

SUMMARY: Approve a contract with Kenyon Consulting to provide underwriting and management services to the CDBG staff for the West Jordan Housing Rehabilitation and Downpayment Programs.

FISCAL AND/OR ASSET IMPACT: All costs and expenses for underwriting and management services to CDBG staff is provided as part of the annual CDBG funding provided by the Department of Housing & Urban Development. No direct charges to the City will be required.

STAFF RECOMMENDATION:

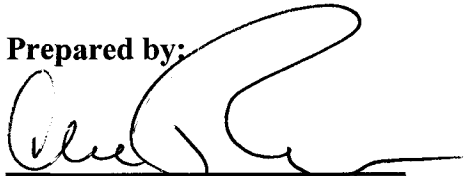
Staff recommends approval of a contract with to Kenyon Consulting for underwriting and management services to CDBG staff for the West Jordan Housing Rehabilitation and Downpayment Programs.

MOTION RECOMMENDED:

"I move to adopt Resolution 16-115 authorizing the Mayor to execute the contract with Kenyon Consulting for ongoing underwriting and management services to staff for the Housing Rehabilitation and Downpayment Programs on a per unit cost of \$400 for Downpayment and \$2,600 for Housing Rehabilitation.

Roll Call vote required

Prepared by:



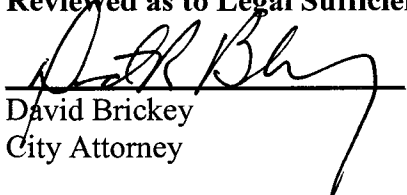
Charles Tarver
Grants Manager

Reviewed by:



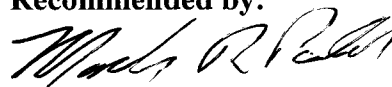
David Oka
Development Director

Reviewed as to Legal Sufficiency



David Brickey
City Attorney

Recommended by:



Mark R. Palesh
City Manager

BACKGROUND DISCUSSION:

Under the ongoing Community Development Block Grant program, the City utilizes the services of a consultant to assist staff in the financial underwriting of projects under the Downpayment and Housing Rehabilitation Loan program. In addition, under the Housing Rehabilitation Loan program services including inspection, preparation of work write-ups, owner contractor coordination and lead base paint inspection are provided by the consultant.

The City issued a Request for Proposals and received two responses (Kenyon Consulting and High Impact Financial Analysis, LLC) for these services. Each proposal was reviewed and rated for General Qualifications, CDBG Program Experience, Project Knowledge, Proposed Scope of Work, and Proposed Costs. Based upon proposal ratings and acceptable past performance with the City, Staff feels that that Kenyon Consulting is most qualified to provide the required services.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 16-115

**A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR
OF AN AGREEMENT BETWEEN THE CITY OF WEST JORDAN
AND KENYON CONSULTING**

WHEREAS, the City Council of the City of West Jordan desires to enter into an agreement between Kenyon Consulting and the City of West Jordan for “Underwriting and Management Services for the CDBG Downpayment and Housing Rehabilitation Programs”; and

WHEREAS, the Mayor is authorized to execute this agreement pursuant to Utah Code Annotated 10-3-1223,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is authorized and directed to execute the Agreement entitled as follows:

“CDBG Underwriting and Management Services for Downpayment and Housing Rehabilitation Programs”

Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 27th day of July 2016.

KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council	"AYE"	"NAY"
Dirk Burton	_____	_____
Jeff Haaga	_____	_____
Zach Jacob	_____	_____
Chris McConnehey	_____	_____
Chad Nichols	_____	_____
Sophie Rice	_____	_____
Mayor Kim V. Rolfe	_____	_____

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT (this “**Agreement**”) is effective July 1, 2016, by and between **CITY OF WEST JORDAN**, a Utah municipality (“**WEST JORDAN**”), and **KENYON CONSULTING, INC.**, a Utah corporation (“**Independent Contractor**”).

RECITALS:

- A. Independent Contractor has experience in operating a housing rehabilitation program.
- B. West Jordan is in need of such services.
- C. West Jordan desires to enter into an independent contractor agreement with Independent Contractor for such services.
- D. The parties have determined that it is mutually advantageous to enter into this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, mutual covenants and undertakings, the parties hereby agree as follows:

1. **Employment of Independent Contractor.** West Jordan agrees to engage Independent Contractor, and Independent Contractor agrees to furnish all services and materials necessary or desirable to operate a housing rehabilitation program and down payment assistance program for the benefit of West Jordan. (All such services are collectively referred to herein as the “**Services**”).

2. **Detailed Description of the Services.** Independent Contractor shall, do, perform, and carry out in a good, professional manner the Services, as more particularly described in Attachment “A.”

3. **Fees for Services.** The fees for Services will be \$2,600 per project for the Housing Rehabilitation Program, which shall be paid \$1,300 once a loan has been approved by the loan committee and the remainder when the project is complete, file has been submitted to West Jordan, and all Services with respect to the project are acceptable to West Jordan.

The fee for services for the Down Payment Program will be \$ 400.00, which shall be paid when the project is complete, file has been submitted to West Jordan, and all Services with respect to the project are acceptable to West Jordan.

4. **Expenses and Costs.** The fees for Services include all expenses and costs.

5. **Services Performed in a Professional, Reasonable Manner.** The Services shall be provided by Independent Contractor in a professional, manner in compliance with all applicable laws, ordinances, rules, regulations, and applicable standards of performance including but not limited to the status verify system requirements for contractors of UTAH CODE ANN. § 63G-11-103. Subject to the foregoing, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with Independent Contractor.

6. **Public Information.** Independent Contractor understands and agrees that this Agreement and related invoices, etc., will be public documents as provided in UTAH CODE ANN. § 63G-2-101, *et seq.*

7. **Confidentiality.** Independent Contractor agrees (1) to hold confidential information in strict confidence; (2) not to disclose confidential information to any third-party except upon West Jordan's prior written consent; and (3) to use reasonable precautions and processes to prevent unauthorized access, use, or disclosure of West Jordan confidential information; provided, however, that Independent Contractor may disclose confidential information if and only to the extent required to do so by applicable law (in which case, Independent Contractor shall advise West Jordan as soon as practicable and prior to disclosure if practical and cooperate and assist West Jordan at West Jordan's cost and expense, if West Jordan seeks a protective order or other relief from such disclosure requirements). As used in this Agreement, confidential information means all information material that constitutes a private, controlled, or protected record or document, or is exempt from disclosure as referenced in Utah Code Ann. § 63G-2-101, *et seq.* Independent Contractor also agrees to obligate their employees to the same obligations imposed on Independent Contractor as provided in this section.

8. **Alcohol and Drug-free Work Place.** All personnel during such time that they provide Services shall not be under the influence of alcohol, any drug or combined influence of alcohol or any drug to a degree that renders the person incapable of safely providing the Services. Further all personnel during such time that they provide Services shall not have sufficient alcohol in his body, blood or on his breath that would constitute a violation of UTAH CODE ANN. § 41-6a-502 (without giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle) or any measurable controlled substance in his body that would constitute a violation of UTAH CODE ANN. § 41-6a-517 (without giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle).

9. **Equipment and Facilities.** For purposes of performing the Services, Independent Contractor shall furnish and supply at its sole cost all necessary labor, supervision, equipment, tools and supplies necessary and incident to performing the Services.

10. **Indemnity.** Independent Contractor shall defend, protect, indemnify, save and hold harmless West Jordan, including its elected and appointed officials, employees, agents and contractors from and against any and all demands, liabilities, claims, damages, actions, or proceedings, in law or in equity, including reasonable attorneys' fees and costs of suits, relating to or arising from Independent Contractor providing the Services to West Jordan. Nothing herein

shall be construed to require Independent Contractor to indemnify West Jordan against West Jordan's own negligence.

11. **Term.** This Agreement shall be effective as of the date hereof and shall terminate on June 30, 2020, provided, however, upon the consent of the parties hereto and subject to the right to terminate as provided herein the parties may renew the agreement for successive yearly periods

12. **Assignment and Delegation.** Independent Contractor will not assign or delegate the performance of its duties under this Agreement without the prior written approval of West Jordan.

13. **Employment Status.**

a. **Official Status.** Independent Contractor shall have complete control and discretion over all personnel providing Services hereunder. All such personnel shall be and remain employees of Independent Contractor and shall be considered to be independent contractors. Independent Contractor has no authority, expressed or implied, to bind West Jordan to any agreement, settlements, or liability whatsoever.

b. **Salary and Wages.** West Jordan shall not have any obligation or liability for the payment of any salary or other compensation to personnel providing Services hereunder.

c. **Employment Benefits.** All personnel providing Services hereunder are and shall remain employees of Independent Contractor. All personnel providing Services shall have no right to any West Jordan pension, civil service or any other West Jordan benefits pursuant to this Agreement or otherwise.

14. **Termination.** Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party.

15. **Insurance.** Independent Contractor shall obtain insurance as set forth below:

Worker's Compensation Insurance	
And Employer's liability	statutory amount

Independent Contractor shall furnish West Jordan certificates of insurance evidencing the insurance requirements herein. Certificates shall contain provisions that at least 30 days' prior written notice will be given to West Jordan in the event of cancellation, reduction or renewal of the insurance and shall name West Jordan as an additional insured or certificate holder.

16. **Notice.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below:

West Jordan City: Mayor Kim V. Rolfe
West Jordan City
8000 S. Redwood Rd.
West Jordan, Utah 84088

Independent Contractor: Kenyon Consulting, Inc.
P.O. Box 1605
Draper, UT 84020

17. **Nonfunding.** The parties acknowledge that funds are not presently available for the performance of this Agreement beyond the end of West Jordan's fiscal year, which is June 30, 2017. Each party's obligation for performance under this Agreement beyond that date is contingent upon funds being budgeted and/or appropriate for payment and providing the Services. If no funds or insufficient funds are appropriated and/or budgeted in any fiscal year or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on West Jordan as to such fiscal year (or any succeeding fiscal year), but, instead, shall terminate and become null and void on the first day of the fiscal year on which funds were not budgeted and/or appropriated, or in the event of a reduction in appropriation, on the last day before the reduction became effective (except as those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach, and no right or action or damage or other relief shall accrue to the benefit of Independent Contractor and the Agreement shall terminate and become null and void.

18. **Claims and Disputes.** Claims, disputes and other issues between the parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court in and for Salt Lake County, Utah. Unless terminated pursuant to provisions hereof or otherwise agreed in writing, Independent Contractor shall continue to perform the Services during any such litigation and West Jordan shall continue to make payments to Independent Contractor in accordance with the terms of this Agreement.

19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

20. **Patents, Copyrights, Etc.** The Independent Contractor will indemnify and hold West Jordan, its officers, agents, and employees harmless from liability of any kind or nature, including the Independent Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of this Agreement.

21. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall

in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

22. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

23. **Applicable Law.** The provisions hereof shall be governed by and construed in accordance with the laws of the state of Utah.

24. **Entire Agreement and Modification of Agreement.** This Agreement and exhibits attached hereto constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by the parties.

25. **Force Majeure.** Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control.

26. **Time.** Time is the essence hereof.

27. **Survival.** All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

28. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

29. **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

30. **Severability.** In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

31. **Exhibits and Recitals.** The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

32. **Injunctive Relief.** Notwithstanding anything to the contrary in this Agreement, Independent Contractor acknowledges that the unauthorized use or disclosure of confidential information would cause irreparable harm to West Jordan. Accordingly, Independent Contractor agrees that West Jordan will have the right to obtain an immediate injunction against any breach or threatened breach of section 7 of this Agreement, as well as the right to pursue any and all other rights or remedies available at law or in equity for such breach.

33. **Conflicts of Interest.** Independent Contractor represents and certifies that it has not offered or given any gift or compensation prohibited by law to any officer or employee of West Jordan to secure favorable treatment with respect to being awarded this Agreement.

IN WITNESS WHEREOF, West Jordan caused this Agreement to be signed by its mayor and attested by its city recorder and delivered, and Independent Contractor has caused the same to be signed and delivered.

CITY OF WEST JORDAN

By:

Mayor Kim V. Rolfe

ATTEST

**INDEPENDENT CONTRACTOR:
KENYON CONSULTING, INC.**

By:

Printed Name: James L. Kenyon

ATTACHMENT "A"

The intent of this contract is for the Contractor to provide all services required to operate the Housing Rehabilitation Program. The program activities includes the following general Categories:

1. Review applications for general eligibility
2. Meet with property owners to inspect the home and develop a work write-up.
3. Obtain construction bids.
4. Obtain all back up information for under writing. (Income, Credit report, appraisal)
5. Present loan package to City Loan Committee.
6. Prepare loan documents.
7. Hold loan closing.
8. Watch over construction process.
9. Prepare progress payments and change orders.
10. Insure all proper building permits are obtained and county codes met.
11. Resolve disputes between contractors and home owners.
12. Close out the file at the end of construction prepares the file for audit.

The intent of this contract is for the Contractor to also provide all services required to operate the Down Payment Assistance Program. The program activities includes the following general Categories:

1. Review applications for general eligibility
2. Obtain all back up information for under writing. (Income, credit report, appraisal)
3. Present loan package to City Loan Committee.
4. Prepare loan documents.
5. Deliver loan documents and check to Title Company.
6. Close out the file and prepare the file for audit.