



STAFF REPORT

DATE: AUGUST 21, 2012
TO: HONORABLE CHAIR AND COMMISSIONERS OF THE COLTON HOUSING AUTHORITY
FROM: ROD FOSTER, EXECUTIVE DIRECTOR *Ry for RF*
PREPARED BY: ARTHUR MORGAN, REDEVELOPMENT MANAGER *[Signature]*
SUBJECT: APPROVE PROFESSIONAL SERVICE AGREEMENT WITH MILLER ARCHITECTURE CORPORATION FOR ARCHITECTURAL DRAWINGS FOR THE SENIOR REPLACEMENT HOUSING PROJECT

RECOMMENDED ACTION

It is recommended that the Colton Housing Authority (“Authority”) approve a standard Professional Services Agreement (“Agreement”) with Miller Architecture Corporation (“Miller”) in the amount of \$110,950 for architectural engineering and drawings for the affordable Senior Replacement Housing Project, with any non-substantive revisions approved by the Executive Director and City Attorney.

GOAL STATEMENT

The proposed action will support the City of Colton’s (“City”) goal of providing affordable housing within the City.

BACKGROUND

On December 20, 2005, the Redevelopment Agency for the City of Colton (“Agency”) approved Resolution No. 849, adopting a Replacement Housing Plan (the “Replacement Housing Plan”) to replace the 101 units of affordable senior housing demolished as a result of construction defects, locating the replacement units on the Redevelopment Agency owned parcels at Colton Avenue and Mount Vernon Avenue. The Replacement Housing Plan was reaffirmed by the Agency on September 16, 2008.

In 2009, the City issued a Request for Qualifications for the replacement project to 21 affordable housing developers, and 8 responded. Over the two years since the RFQ was issued, three developers attempted to structure a project and financing package acceptable to the Senior Housing Subcommittee, without success.

In late 2011, Eagle Colton 55 LLC (“Eagle”) made contact with staff to indicate their interest in developing an affordable housing project on the former Colton Palms site as a mixture of affordable and market-rate senior units. An absorption study was completed to determine if the local market could substantiate the project as proposed by Eagle. Also studied was the location

of the project which showed that the former Colton Palms site was a superior location for a senior housing project. The Senior Housing Committee agreed and recommended to the City Council to move forward with Eagle.

On December 6, 2011, the City Council approved an Exclusive Negotiation Agreement (“ENA”) with Eagle to negotiate the potential terms and conditions of a Disposition and Development Agreement (“DDA”), along with a final pro forma, to develop one hundred twenty (120) units of affordable housing for senior citizens on the former Colton Palms site. On or about January 30, 2012, the City Council selected the Colton Housing Authority to assume the housing assets and functions of the Redevelopment Agency. Based on the pro formas in the ENA and DDA, the City/Authority financial contribution to the replacement housing project was included in the Recognized Obligation Payment Schedule (“ROPS”) and is currently approved as a recognized obligation of the City/Authority by the Department of Finance (“DOF”).

On July 17, 2012, the Authority approved Resolution No. CHA-02-12, authorizing a DDA by and between Eagle Colton 55, L.P., and the Authority, following a recommendation of the Senior Housing Committee approving the terms of the DDA, the conceptual site plan and elevation drawings for the 120-unit affordable senior housing project.

ISSUES/ANALYSIS

The DDA includes a Predevelopment phase of the project, with \$250,000 appropriated for studies, engineering, drawings and plans needed prior to the construction loan that will be obtained by Eagle. These costs will ultimately be reimbursed to the Authority. The Authority is following the City’s bidding procedures (CMC Chapter 3.08). Owner Gary Miller is a former Colton resident and his business is local to the area. His firm was originally engaged by the City through a letter agreement in the amount of \$24,850 to prepare architectural conceptual drawings and site plans during the initial stages of the project to aid in decision making by the Senior Housing Committee on the design of the project. That Letter Agreement was not required to be competitively bid, since it was under \$25,000. The Senior Housing Committee, staff and the developer were pleased with the conceptual ideas for the project, thus a decision was made to continue the balance of the project with Miller.

Tonight’s proposed Agreement for \$110,950 will fund architectural tasks needed between the conceptual drawings and before the construction loan is put in place by Eagle, as described in the DDA and more completely listed in the attached Agreement. It will also include two 3-dimensional renderings and a 30-second animated walk-through of the project. Although it would normally have been competitively bid, State law and Section 3.08.140(E) of the CMC authorizes competitive bidding to be waived when it is in the best interests of the Authority and its administrative operations. For the reasons stated above, staff believes it is in the best interests of the Authority and its administrative operations to waive competitive bidding in this case.

FISCAL IMPACTS

The contract with Miller for \$110,950 is included in the Predevelopment budget amount of \$250,000 (898-9000-9358-2350) and is listed as a recognized obligation on the ROPS.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Attachment A—Standard Professional Services Agreement with Miller Architectural Corporation.

ATTACHMENT A

**STANDARD PROFESSIONAL SERVICES AGREEMENT
WITH MILLER ARCHITECTURAL CORPORATION**

ATTACHMENT A

**PROFESSIONAL SERVICES AGREEMENT
WITH MILLER ARCHITECTURAL CORPORATION**

COLTON HOUSING AUTHORITY

PROFESSIONAL SERVICES AGREEMENT MILLER ARCHITECTURAL CORPORATION

1. PARTIES AND DATE.

This Agreement is made and entered into this 21st day of August, 2012 by and between the Colton Housing Authority (“Authority”), established by the Colton City Council on March 15, 2011 by Resolution No. R-28-11, pursuant to Health and Safety Code 34240 et seq. with its principal place of business at 650 North La Cadena Drive, Colton, California 92324 and Miller Architectural Corporation, a California “S” Corporation with its principal place of business at 1177 Idaho Street, Suite 200, Redlands, CA 92374 (“Consultant”). Authority and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Authority on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing architectural drawings services to public clients, is licensed in the State of California, and is familiar with the plans of Authority.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Authority all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from August 21, 2012 to March 31, 2013, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Authority retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of Authority and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Authority shall respond to Consultant's submittals in a timely manner. Upon request of Authority, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Authority.

3.2.4 Substitution of Key Personnel. Consultant has represented to Authority that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Authority. In the event that Authority and Consultant cannot agree as to the substitution of key personnel, Authority shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Authority, or who are determined by the Authority to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Authority. The key personnel for performance of this Agreement are as follows: Glen Follett, Project Manager and David Pieksma, Construction Documents.

3.2.5 Authority's Representative. The Authority hereby designates Rod Foster, or his or her designee, to act as its representative for the performance of this Agreement ("Authority's Representative"). Authority's Representative shall have the power to act on behalf of the Authority for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the Authority's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Gary W. Miller, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with Authority staff in the performance of Services and shall be available to Authority's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the Authority, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Authority to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Authority, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Period of Performance. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the Authority and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the Authority will suffer damage.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without

giving written notice to the Authority, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Authority and the City of Colton, their officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the Authority or its representatives for inspection and copy at any time during normal business hours. The Authority shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the Authority to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.6 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify Authority and the City of Colton against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Drawings and Specifications. Architect shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services. Architect shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto.

3.2.10.8 Americans with Disabilities Act. Architect will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Architect shall inform City of its interpretations of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law. Unless Architect brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Architect's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Architect, and the Architect shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. If Architect brings such inconsistencies and conflicting interpretations to the attention of the City and request's City's direction on how to proceed, Architect shall be responsible to the City only pursuant to the indemnification provision of this Agreement.

3.2.10.9 Asbestos Certification. Architect shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Architect prepares for the Project. Architect shall require all consultants who prepare any other documents for the Project to submit the same written certification. Architect shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Architect shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.2.10.10 Water Quality.

(A) Management and Compliance. To the extent applicable, Consultant's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) Liability for Non-compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Consultant or Authority to penalties, fines, or additional regulatory requirements. Consultant shall defend, indemnify and hold the Authority and the City of Colton, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Consultant's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the Authority, its officials, officers, agents, employees or authorized volunteers.

I Training. In addition to any other standard of care requirements set forth in this Agreement, Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Consultant further warrants that it, its employees and subcontractors will receive adequate training, as determined by Authority, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, Authority will provide Consultant with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance.

3.2.11.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the Authority that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this Section. Failure to provide and maintain all required insurance shall be grounds for the Authority to terminate this Agreement for cause.

3.2.11.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.11.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.11.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Authority to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) the Authority and the City of Colton, their directors,

officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Authority and the City of Colton, their directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Authority or the City of Colton, their directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the Authority, the City of Colton, their directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Authority, the City of Colton, their directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Authority, the City of Colton, their directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Authority, the City of Colton, their directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Authority, the City of Colton, their directors, officials, officers, employees, agents, and volunteers.

3.2.11.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Authority, the City of Colton, their directors, officials, officers, employees, agents, and volunteers.

3.2.11.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Authority. Consultant shall guarantee that, at the option of the Authority, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, the City of Colton, their directors, officials, officers, employees, agents, and volunteers; or (2) the

Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.11.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the Authority.

3.2.11.8 Verification of Coverage. Consultant shall furnish Authority with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Authority. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Authority if requested. All certificates and endorsements must be received and approved by the Authority before work commences. The Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11.9 Reporting of Claims. Consultant shall report to the Authority, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.12 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Authority during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed One Hundred Ten Thousand Nine Hundred Fifty Dollars (\$110,950) without

written approval of the Authority. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to Authority a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Authority shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Authority.

3.3.4 Extra Work. At any time during the term of this Agreement, Authority may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Authority to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Authority's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Authority shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Authority, the City of Colton, their elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. Authority may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to Authority, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Authority may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Authority may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Authority to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of Authority, and shall not be used in whole or in substantial part by Consultant on other projects without the Authority's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Authority reproducible copies of all Documents & Data, in a form and amount required by Authority. Authority reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Authority at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to Authority upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Authority any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Authority upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Authority and provide Authority with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that Authority is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the Authority.

3.5.3 Right to Use. Authority shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a

project other than this Project without employing the services of Consultant shall be at Authority's sole risk. If Authority uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Authority upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the Authority, the City of Colton, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Authority of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of Authority, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Authority's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Authority.

3.6 General Provisions.

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Miller Architectural Corporation
1177 Idaho Street, Suite 200
Redlands, CA 92374
Attn: Gary W. Miller

Authority:

Colton Housing Authority
650 North La Cadena Drive

Colton, California 92324
Attn: Rod Foster

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the Authority, the City of Colton, their directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of Authority's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.6.1 that may be brought or instituted against the Authority, the City of Colton, or their directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Authority, the City of Colton or their directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse Authority for the cost of any settlement paid by the Authority, the City of Colton or their directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Authority's and City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse the Authority, the City of Colton and their directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Authority, the City, their directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et

seq. prior to filing any lawsuit against the Authority. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the Authority.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 Authority's Right to Employ Other Consultants. Authority reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.7 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Authority. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to the Authority, and the City of Colton include their elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, stoppels or otherwise.

3.6.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.6.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Authority shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the Authority or the City of Colton, during the term of his or her service with the Authority or the City of Colton, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.15 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE COLTON HOUSING AUTHORITY
AND MILLER ARCHITECTURAL CORPORATION**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 21st day of August, 2012.

COLTON HOUSING AUTHORITY

By: _____
Rod Foster
Executive Director

Attest: _____
Eileen Gomez, CMC
Secretary

MILLER ARCHITECTURAL CORPORATION
A California "S" Corporation

By: _____
Signature

Name (Print)

Title (Print)

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT "A"
SCOPE OF SERVICES

Task 1 – Project Information

1. Code sheet and project title sheet illustrating the following:
 - a. Method of compliance with City Land use ordinance for:
 - i. Parking
 - ii. Lot coverage
 - iii. Open space
 - iv. Building height
 - b. Applicable lifesafety codes
 - c. Code analysis for the following:
 - i. Occupancy type
 - ii. Construction type
 - iii. Exiting diagram

Task 2 – Government Processing Planning Phase

1. Site plan
2. Unit floor plans for a one and two bedroom units
3. Clubhouse floor plan
4. Overall building floor plans
5. Building elevations for apartments and club house
6. Other architectural elements as required by Planning Department

Task 3 – Design Development

1. Site plan
2. Clubhouse, unit and building floor plans
3. Reflected ceiling plans
4. Roof plans
5. Building elevations
6. Building sections
7. Coordination with subconsultants who are compensated under a separate contract

Task 4 - Construction Documents--Architectural

1. Dimensioned and noted site plan
2. Dimensioned and noted unit and clubhouse floor plans
3. Noted building elevations
4. Dimensioned and noted building sections
5. Dimensioned and noted wall sections
6. Finish schedules with color selections
7. 3-Dimensional Renderings (2 views) and Animated Walk-through (30 sec.)

We will provide the above services for the following fees:

Task 1 Project Information including code research	\$2,000.00
Task 2 Government Processing Planning Phase	\$11,600.00
Task 3 Design Development	\$28,600.00
Task 4 Construction Documents--Architectural Documents 3 Dimensional Renderings and Animated Walk-Through	\$68,750.00
Total	<u>\$110,950.00</u>

Additional Services –

1. Changes to the scope of work during any phase of the contract shall be billed in accordance with the attached hourly rate schedule, attached as Exhibit "C" to this contract.
2. Design hours exceeding the limit listed in the schematic design phase, if approved by the Owner, shall be billed hourly in accordance with the attached hourly rate schedule.
3. Services beyond submitting and allowing the review process to run its normal course shall be billed hourly in accordance with the attached hourly rate schedule. These services include but are not limited to phone calls to assure timely processing, tracking documents lost by government agencies and other efforts necessary to assure the government agencies are moving the project through the process.

Note: Reimbursable expenses and services beyond the above-described scope shall be billed in accordance with the attached fee schedule.

The Owner permits the Architect to take photographs of the property during construction and upon completion of the work.

Payments on account of services rendered, and for reimbursable expenses incurred, shall be made monthly upon presentation of Architect's statement of services. Architect may charge interest at a rate of 1% per month for unpaid balances over 30 days late. Work may stop on this project if an invoice is past due by more than 30 days. Collection efforts including liens will be pursued for invoices more than 90 days past due. The Owner agrees that the Architect has a lien on any money or property recovered in satisfaction or partial satisfaction of your claim in any matter in which you have retained the Architect. This lien is not limited to fees and costs incurred in the specific matter from which a settlement or judgment arose, but applies to all fees and costs the Owner owes the Architect for any legal services provided.

Owner Responsibilities:

1. Geotechnical Services
2. Property Boundary and Topographic Survey with utilities
3. Landscape Architecture
4. Civil Engineering
5. Pool and Spa design
6. Title Insurance Policy and Legal Description
7. Mailing Labels and Radius Map required for Entitlement Process

The following items are excluded from this proposal:

- Reproduction Costs (except for costs for Architect's in-house use)
- Hazardous Material Testing & Abatement

- Title Information (Radius Map, etc.)
- Environmental Impact, CEQA & Traffic Reports
- Cost Estimates
- Agency Fees
- Construction Related Testing/Reports
- Project Scheduling
- On-Site or Off-Site Information/Improvement
- Civil Engineering
- Landscape Architect
- Civil Engineering

WORKING DRAWINGS
EXHIBIT "B"

SCHEDULE OF SERVICES

Work will commence immediately upon execution of this contract.

Completion date: On or before March 31, 2013.

EXHIBIT "C"

**COMPENSATION
2011 FEE SCHEDULE**

MILLER ARCHITECTURAL CORPORATION

**1177 IDAHO ST, STE. 200
REDLANDS, CA. 92374
(909) 335-7400 FAX (909) 335-7299**

PROFESSIONAL AND TECHNICAL STAFF:

Senior Principal	\$176.00/hour
Court/Arbitration Appearance	\$205.00/hour
Deposition	\$205.00 – First Hour \$221.00 – Each Additional Hour
Principal (Architecture Division)	\$145.00/hour
Associate (Architecture Division)	\$105.00/hour
Principal (Interiors Division)	\$116.00/hour
Senior Project Manager	\$101.00/hour
Project Manager	\$88.00/hour
Senior Technician	\$80.00/hour
Intermediate Technician	\$69.00/hour
Junior Technician	\$57.00/hour
Administrative Assistant	\$61.00/hour
Secretarial/Clerical/Intern	\$48.00/hour
Archive Retrieval Fee	\$105.00/Flat Fee

Overtime for hourly personnel will be charged at the base rate of 1.5 per hour for time in excess of 8 hours per weekday or for work on Saturdays, Sundays and holidays.

EXPENSES:

1. Out of pocket expenses, (i.e. photo copies, film development, shipping, blueprints): cost plus 15%.
2. In-house Services:

Large Format:	\$ 2.01 per 24" x 36" sheet	
	\$ 2.89 per 30" x 42" sheet	
Plotter Costs:	\$6.03 per 24" x 36" sheet	
	\$7.62 per 30" x 42" sheet	
Photo Copies:	Black & White: \$0.28 per 8-1/2" x 11"	page
	Black & White: \$0.47 per 11" x 17"	page
	Color: \$1.57 per 8-1/2" x 11"	page
	Color: \$2.63 per 11" x 17"	page
	Black & White \$0.68 per 12" x 18"	page
	Color \$3.15 per 12" x 18"	page
3. Mileage: \$.60 per mile.
4. For work which requires overnight lodging, a per diem charge will be made appropriate to the area, based on actual costs.
5. Outside consultants not included in base fee and plan check fees shall be billed at direct cost plus 5%.