

Redevelopment Agency of the City of Brisbane Agenda Report

TO: Honorable Chairman and Redevelopment Agency Board

FROM: Fred Smith via Clay Holstine, Executive Director

DATE: Meeting of October 4, 2010

SUBJECT: Consider approval of a contract with Rebuilding Together Peninsula (RTP) establishing a program to rehabilitate and install energy efficiency measures in homes owned by lower income households in Brisbane.

CITY COUNCIL GOALS:

- Goal #11. To develop management and fiscal systems to maximize effectiveness of city services and accountability to Brisbane taxpayers and citizens.
- Goal #14. To preserve and enhance livability and diversity of neighborhoods.

PURPOSE: To implement a program to rehabilitate and promote energy efficiency in homes owned by lower income households in Brisbane.

RECOMMENDATION:

Authorize the Executive Director to execute the agreement with RTP.

BACKGROUND and DISCUSSION:

At its May 17th 2010 meeting, the City Council gave preliminary approval for a program to utilize the Low and Moderate Income Housing Fund to help lower income homeowners rehabilitate and install energy conservation measures on their homes. Staff presented a proposal to collaborate with RTP, utilizing the Redevelopment Agency's Low and Moderate Income Housing Fund to sponsor up to three projects per year in Brisbane.

RTP is a non-profit organization that utilizes donations of money, building materials and labor to provide needed repairs to homes owned by lower income households that the homeowner could not otherwise afford to do. The projects can include energy efficiency upgrades and retrofits to the homes and the work is done at no cost to the homeowner.

RTP's business model requires that, for each rehabilitation project, a major sponsor is needed to pay overhead costs such as insurance, administration, site requirements, and labor and materials that must be contracted for. These costs can run up to \$10,000 per home, depending on what kinds of new equipment are being installed in the home. For instance, a new roof or new furnace will involve a substantial cost to purchase and install these items and volunteers with the necessary skills to install these are not generally available.

California Redevelopment Law (CRL) provides that the Low and Moderate Income Housing Fund (LMIHF) must be used to "increase, improve or preserve" the community's supply of low and moderate income housing. Rehabilitation programs that serve lower income households, such as the RTP program, meet this requirement and can be funded by the LMIHF.

Because the CRL requires that housing units assisted with the LMIHF must have a recorded document that preserves affordability or, at a minimum, provides a means to recover the Agency's investment if the home is sold at a non-affordable price. Staff has consulted with Lynn Hutchins of Goldfarb and Lipman who recommends that a promissory note or grant agreement be executed and a deed of trust recorded for each home rehabilitated under this program. The note would provide that the grant be forgiven after a period of three years after which the deed of trust would be removed from the title. This will ensure that homeowners will not be able to use Agency funds to fix up a home for the purpose of flipping it for a higher price. Once the proposed contract with RTP is finalized, Goldfarb and Lipman will draft the necessary documents.

At the May 17th meeting, RTP made a presentation to the City Council describing its mission and operation and how they could potentially team up with Brisbane to do rehabilitation projects in Brisbane. The City Council gave preliminary approval for the program and approved a supplemental appropriation in the amount of \$35,000 to fund three projects and legal costs for drafting the documents. The approval was made with the understanding that a formal agreement spelling out specifically how the program would be structured would be brought back to the Council for final approval.

The attached proposed agreement with RTP defines the process of outreach, project selection, funding and administration as well as defining the scope of work for potential projects. If the proposed agreement is approved, RTP will, in cooperation with City staff, begin conducting outreach to qualified Brisbane homeowners this fall.

The agreement has a term of one year. If the program is successful, staff anticipates that it will be renewed annually in subsequent years. This will enable the Agency and RTP to fine tune the program if changes are necessary.

FISCAL IMPACT/FINANCING ISSUES:

A supplemental appropriation in the amount of \$35,000 was approved on May 17th from fund 283, the Low and Moderate Income Housing Fund. This amount should be

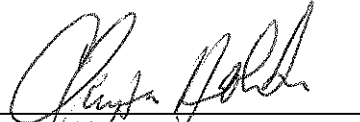
sufficient to fund legal fees for program set up and sponsor three rehabilitation projects in Brisbane.

MEASURE OF SUCCESS:

Two to three homes rehabilitated per year in Brisbane.



Department Head



City Manager

ATTACHMENTS:

Proposed agreement with RTP

**AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF
BRISBANE AND REBUILDING TOGETHER PENINSULA FOR THE ALLOCATION
OF REDEVELOPMENT LOW AND MODERATE INCOME HOUSING "SET ASIDE"
FUNDS FOR REHABILITATION OF HOMES OWNED BY LOWER INCOME
HOUSEHOLDS IN BRISBANE**

This Agreement dated _____, 2010, is between the REDEVELOPMENT AGENCY OF THE CITY OF BRISBANE, a public body, corporate and politic, hereinafter referred to as "Agency" and REBUILDING TOGETHER PENINSULA, a California nonprofit corporation, hereinafter referred to as "Grantee."

RECITALS

- A. Grantee has requested funds to provide the non-substantial rehabilitation of up to three (3) homes owned and occupied by low-income homeowners with the goal of providing repairs and rehabilitation and installation of energy conservation measures for the homes in an effort to increase the energy efficiency of the homes and improve the homes' condition. The scope of services to be provided is described in the Grantee's proposed work program, attached and incorporated as Exhibit A.
- B. Grantee operates a program that provides assistance to rehabilitate homes with volunteer labor for low-income homeowners in Brisbane and San Mateo County.
- C. The Agency, pursuant to Health and Safety Code Sec. 33334.2, has set aside 20% of its gross tax increment funds into a Low and Moderate Income Housing Fund for the purpose of increasing, conserving or improving the community's supply of housing for low and moderate income households.
- D. The Agency has approved and authorized the allocation to Grantee of Thirty Thousand Dollars (\$30,000) from the Agency's Low and Moderate Income Housing Fund, to be disbursed for the purposes and in accordance with the terms contained in this Agreement.

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed, Agency and Grantee agree as follows:

1. Provision of Funds

- a. The Agency will make one or more distributions to Grantee aggregating not more than Thirty Thousand Dollars (\$30,000), drawn from its Low and Moderate Income Housing Fund, for the sole purpose of providing the rehabilitation of approximately three homes owned by low-income homeowners with the goal of increasing the energy efficiency of the homes and improve the homes' condition. Payment shall be made to Grantee within thirty (30) days following Agency's approval of a reimbursement request containing a summary statement of expenditures for each home being rehabilitated under the terms of this Agreement. At the request of the Agency, Grantee shall provide such additional documents as the Agency may specify to support Grantee's request for reimbursement.

- b. Payment shall be made to Grantee only for costs incurred on or after the effective date of this Agreement.

2. Project Reports

Project reports shall be prepared by the Grantee and submitted to the Agency for approval prior to any work being done on a home that will be eligible for funding under this Agreement. The Project Report shall include the address of the home to be served, a summary of the gross household income, household size, whether the home is owned by person(s) 62 or more years of age and a complete scope of work for the proposed improvements. The proposed improvements shall be consistent with the improvements described in Exhibit A.

3. Time of Performance

The term of this Agreement shall be for a period of twelve (12) months commencing January 1, 2011 and ending December 31, 2011, unless sooner terminated as hereinafter provided.

4. No Partnership

The terms of this Agreement shall in no way be construed to create a partnership, joint venture or any other joint relationship between Agency and Grantee.

5. Independent Contractor

Grantee and its employees are not employees of Agency but rather are and shall always be considered independent contractors.

6. Indemnity and Hold Harmless

Grantee agrees to indemnify, defend, and hold harmless Agency and the City of Brisbane, and their respective officers, officials, agents, employees and volunteers, from any liabilities, claims, suits or actions, losses or expenses, including attorney fees, caused by, arising out of, or in connection with, either directly or indirectly, Grantee's performance under this Agreement.

7. Insurance

Grantee shall not commence work under this Agreement until all required insurance has been obtained, and such insurance has been approved by the Agency Counsel, with certificates of insurance evidencing the required coverage, signed by a broker or other individual capable of binding the insurance company. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Agency of any pending change in the limits of liability or of any cancellation or modification of the policy.

a. Worker's Compensation and Employer's Liability Insurance:

Grantee shall have in effect during the entire life of this Agreement Worker's Compensation providing full statutory coverage and Employer's Liability Insurance providing coverage in an amount not less than \$1,000,000.00. In signing this Agreement, Grantee makes the following certification, required by Section 18161 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

b. Liability Insurance:

Grantee shall take out and maintain during the life of this Agreement such Comprehensive General Liability and Property Damage Insurance as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Grantee's operations under this Agreement, whether such operations be by Grantee or by any sub-contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. Agency and the City of Brisbane, and their respective officers, officials, agents, employees and volunteers shall be named as additional insureds on any such policies of insurance. Such policies shall also be endorsed to provide that Grantee's coverage shall be primary as respects the Agency and the City of Brisbane, and their respective officers, officials, agents, employees and volunteers, and any insurance maintained by the Agency or the City of Brisbane shall be excess of the Grantee's insurance and shall not contribute with it.

8. Changes to Work Scope

No changes in the scope of work as described in this Agreement shall be made without written approval of the Agency.

9. Assignability

The Grantee shall not assign this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Agency, provided, however, that claims for money due or to become due to Grantee from the Agency under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished promptly to the Agency.

10. Inspection of Work

It is understood that periodic review of Grantee's work may be necessary and the right to so review is reserved by the Agency. The Agency and its authorized representatives shall have access to any books, documents, papers and records of Grantee, which are directly pertinent to the program being funded. Records shall be retained for three years.

11. No Other Public Funds & Prevailing Wages

The Grantee agrees to accept no other public funding other than the Agency funding under this Agreement, either directly or indirectly, for the homes to be assisted under this Agreement. For that reason, the Agency and the Grantee expect that the rehabilitation of the homes under this Agreement will be exempt from the provisions of the California prevailing wages law pursuant to Labor Code Section 1720(c)(4) as well as under 1720(c)(6)(C) with regard to assistance for the rehabilitation of a single-family home and under 1720.4 with regard to volunteer labor. However, to the extent the work is not exempt under the applicable provisions of the Labor Code and as required by applicable law, the Grantee shall, and shall require the contractor (and Grantee's contractor shall require its subcontractors) to pay prevailing wages in the rehabilitation of the homes as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the California Department of Industrial Relations (the "DIR") and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. To the extent required by applicable law, the Grantee shall, and shall require the contractor (and Grantee's contractor shall require its subcontractors) to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall deliver certified payrolls in compliance with Labor Code Sections 1720 et seq. to the Agency monthly. Copies of the currently applicable per diem prevailing wages are available from the DIR. To the extent required by applicable law, during the rehabilitation of the homes, the Grantee shall or shall cause the contractor to post at each home the applicable prevailing rates of per diem wages. The Grantee shall indemnify, hold harmless and defend (with counsel reasonably selected by the Agency) the Agency and the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Grantee, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the rehabilitation of the homes.

12. Project Representation and Notices

The Agency and Grantee hereby designate the following agents to act as project representatives in the matters dealing with the performance of work under this Agreement and for receipt of all notices:

Agency: Clayton L. Holstine
Executive Director
Redevelopment Agency of the City of Brisbane
50 Park Place
Brisbane, CA 94005

Grantee: Seana O'Shaughnessy
Rebuilding Together Peninsula
PO Box 4031
Menlo Park, CA 94026

13. Suspension, Termination or Withholding of Payments

The Agency may, at any time in its absolute discretion, elect to suspend or terminate payment to Grantee, in whole or in part, under this Agreement, or not to make any particular payments on this Agreement in the event of any of the following occurrences:

- a. If Grantee (with or without knowledge) shall have made any material misrepresentation of any nature with respect to any information or data furnished to Agency in connection with the project.
- b. If there is pending litigation with respect to the performance by Grantee of any of its duties or obligations under this Agreement which may materially jeopardize or adversely affect the undertaking of or the carrying out of the project.
- c. If Grantee shall have taken any action pertaining to the project which requires Agency approval without having obtained such approval.
- d. If Grantee is in default under any provision of this Agreement.
- e. If Grantee makes improper use of grant funds.
- f. If Grantee fails to comply with any of the terms and conditions of this Agreement in such a manner as to constitute material breach thereof.
- g. If Grantee submits to Agency any reports which are incorrect or incomplete in any material respect.

Agency shall give Grantee written notice of its decision to withhold, suspend or terminate payment under this section. Such notice shall specify the actions, if any, which must be taken by Grantee before payments will be resumed and the time within which such actions must be completed to the satisfaction of Agency.

14. Termination of Agreement


- a. Agency may terminate this Agreement immediately (by giving written notice to Grantee of the effective termination date stated in the notice) if Grantee abandons its work under the Agreement; if for any reason the timely completion of such project is rendered improbable, infeasible, or illegal; or if Agency otherwise deems such termination to be in the public interest.
- b. This Agreement may be terminated for convenience by either Agency or Grantee by written agreement signed by both parties.

IN WITNESS WHEREOF, this Agreement is executed by the parties.

REDEVELOPMENT AGENCY
OF THE CITY OF BRISBANE

REBUILDING TOGETHER PENINSULA,
a California non-profit corporation

BY: _____
Clayton L. Holstine
Executive Director

BY  _____
Seana O'Shaughnessy
Executive Director

Kate Comfort Han
Interim Executive Director

Attest: _____
Sheri Marie Spediacci
Agency Secretary

APPROVED AS TO FORM:

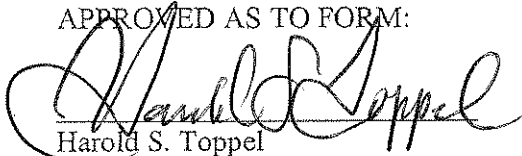

Harold S. Toppel
Agency Counsel

EXHIBIT "A"

City of Brisbane and Rebuilding Together Peninsula Residential Rehab Program

The Program

Rebuilding Together Peninsula (Grantee) is a California non-profit corporation whose mission is to provide needed repairs and rehabilitation to homes owned by low income homeowners. The repairs and rehabilitation are performed by volunteer and contracted labor and are done at no cost to the homeowner. Grantee's mission is to help low income homeowners remain in their own home in safety, warmth and independence.

The types of repairs, rehabilitation and energy conservation measures to be performed or installed in the homes can include but are not limited to:

- Interior and exterior painting
- Roof repair or replacement
- Carpet and vinyl floor replacement
- Window replacement
- Attic or wall insulation
- Repairs to porches, railings or fences.
- Plumbing repairs and upgrades
- Water heater replacement.
- Electrical system repairs and upgrades
- Replacement of lighting and plumbing fixtures
- Furnace replacement
- Duct sealing
- Sealing and caulking of building openings
- Appliance replacement
- Landscaping

Selection Process

The Redevelopment Agency of the City of Brisbane (the Agency) and Grantee will collaboratively promote the Program within the City of Brisbane. Examples of outreach that have worked successfully in other cities include: presentations at the senior center, notices in City newsletters and/or on the City cable station and website, advertisements in the Pennysaver, flyers in the Second Harvest Brown Bags, presentations at any community organizations (i.e. churches/Lions/Rotary/Kiwanis/clubs/neighborhood associations/etc.) and flyers at City Hall, the library and schools.

Interested homeowners will submit an application to Grantee. All applications will be screened initially based on the following criteria: 1) Do they own their home?, 2) Do they live in their home? and 3) Do they qualify as lower income as defined by California HCD income limits for San Mateo County? Applicants are required to submit proof of ownership, residence and income with their applications.

Applicants that meet Grantee's basic criteria will receive a home visit called a "preview." Previews are conducted by Grantee staff and long-time volunteers. The purpose of the preview is to determine if the work needed fits within the mission of Grantee's organization (Will it help the homeowner remain in their own home in safety, warmth and independence?). If the requested work fits Grantee's mission the previewers then provide a general scope of work and make a recommendation whether or not the project should be selected. Grantee acknowledges that installation of energy conservation measures is one of the Agency's objectives for this program and will also endeavor to develop and select projects that include an energy conservation component.

Once Grantee receives all the previewer recommendations, final project selection is based on funding, leadership, and the capacity of the volunteer teams to complete the work required by the applicants.

Agency review and approval

Grantee will submit a Project Report for each selected project to the Agency for review and funding approval. Project Reports will include the address of the home to be served, a summary of the gross household income, household size, whether the home is owned by person(s) 62 or more years of age and a complete scope work for the proposed improvements. The proposed improvements shall be consistent with the improvements described in this document.

Project Reports will be based on verifiable documentation kept by the Grantee and subject to review by Agency staff. Appropriate documentation will include a proposed scope of work, a copy of the homeowner's application and documentation showing that the home and applicant meet the Grantee's and the Agency's requirements.

In order to be eligible for funding by the Agency the home must be located in Brisbane and occupied by a household who's annual combined gross income does not exceed the Lower Income limit for San Mateo County as published annually by the California Dept. of Housing and Community Development (HCD).

The Agency will verify that selected projects meet the Agency's project objectives, its requirements for residency and income eligibility and whether the selected projects can be accommodated within the adopted budget for the program. The Agency program goal is to provide between approximately \$5,000 and \$10,000 in funding for each approved project. Funding for over \$10,000 on a single project may be approved on a case by case basis.

Documents

Prior to commencement of work, selected homeowners will be required to sign a promissory note or grant agreement in favor of the Agency providing for repayment of Agency funds expended to rehabilitate the home if the property is sold within three years. The note or grant agreement will be secured by a deed of trust which will be recorded

against the property. At the expiration of the term of the note or grant agreement the Agency loan or grant will be forgiven and a reconveyance of the deed of trust will be recorded by the Agency.

The Agency will prepare the above documents for signature by the homeowner(s). Grantee will coordinate the execution process with the homeowner and transmit the executed documents to the Agency. The Agency will deliver the deed of trust to the County Recorder.

Scope of Work

Once the project has been approved and the homeowner has executed the required documents, Grantee will schedule and perform the work. Any work that requires building permits shall be conducted only after securing all necessary permits from the City. Grantee will be responsible for securing all permits. Grantee will notify the Agency of the date when work on the project is scheduled to begin.

When the project is completed, Grantee shall submit a Final Project Report to the Agency describing the work that was done and any differences between the completed work and the work described when Grantee submitted the project to the Agency for approval. The Final Project Report shall include signed off final inspections from the building inspector, documenting that the work was completed in compliance with applicable building codes. The Final Project Report shall include an accounting of the costs of materials and other project related costs incurred by Grantee for the project and invoices or other information documenting those costs.

Funding

Upon review and approval of the final Project Report, the Agency shall, within 30 days, remit payment to Grantee to reimburse Grantee for its costs as provided for in the Agreement between Grantee and the Agency.

Sample Eligible Program Costs

%	Item
60%	Program Costs of Materials and Supplies (i.e. Paint, lumber, plumbing, electrical, cleaning materials, debris box, port-a-potties, landscaping materials, cabinets, carpets, sinks, appliances, furnaces, etc.)
30%	Program Costs of Non-materials(i.e. insurance, permitting, volunteer management, t-shirts, banners)
10%	Project management, staff oversight and administrative expenses
100%	

Project Organization

Grantee will assign a team leader for each project. The team leader shall be responsible for organizing and coordinating volunteers and contractors performing the work and ensuring that the work is completed on schedule and according to the plan as submitted in the approved Project Report. The team leader shall also be responsible for general conditions at the project work site such as porta potty, safety measures, etc., as well as securing permits and preparing the Final Project Report to the Agency. Projects will generally be completed in a week or less.