



# REQUEST FOR PROPOSAL

***Business Financial Assistance Program Services for  
State Community Development Block Grant (CDBG)  
and Other State and Federal Program Funding***

Date Issued: *January 3, 2023*

Deadline for Submission: *February 6, 2023 5:30pm*

Electronic Submittals must be submitted to [nwalker@cityoflakeport.com](mailto:nwalker@cityoflakeport.com) prior to the  
deadline

## CITY OF LAKEPORT

*Finance Department*



# REQUEST FOR PROPOSAL

## *Business Financial Assistance Program Services*

### 1. INTRODUCTION

The City of Lakeport, California (“City”), requests for proposals (“Proposals”) from qualified firms (“Respondents”) to provide business financial assistance services (“Services”) for the City’s State Community Development Block Grant and other state and federal programs (“Project”).

Questions or objections relating to the RFP, the RFP procedures, or the required Services may only be submitted via email to [nwalker@cityoflakeport.com](mailto:nwalker@cityoflakeport.com) by January 27, 2023. Any questions or objections that are not submitted within the time and manner specified will be deemed waived. The City will not be bound by the oral representations of any City employees or officials. The City reserves the right to issue addenda responding to such questions or objections, which will become part of the RFP. Addenda will be posted on the City’s website at: [https://www.cityoflakeport.com/bid\\_opportunities.php](https://www.cityoflakeport.com/bid_opportunities.php)

Each Respondent is solely responsible for reviewing any and all addenda before submitting its Proposal.

### 2. PROFILE

The City is located on the western shore of Clear Lake, a natural lake with over 100 miles of shoreline, located in Lake County (County), California. Lakeport is located 120 miles north of San Francisco and 125 miles northwest of Sacramento, the state capital. This helps to support a higher level of commercial and retail businesses, yet over the years the County and City have seen a decline in visitors that has impacted the economic health of the area. Incorporated in 1888, Lakeport is a general law, partial service city with a population of approximately 5,0000 residents; however, it serves as the county seat for the County of Lake and, as such, serves a trade area of roughly 60,000 people during normal business hours. As the county seat, the City benefits from a higher percentage of employment in the public sector which tends to result in a stable workforce in the areas of legal services, healthcare occupations, administration support, financial occupations, community services, media, and forestry occupations. It provides basic municipal utility, police, administrative, planning, parks, public works services and water and wastewater utilities. It does not administer functions related to fire protection, library, or recreation. The City is governed by a five-member city council. Lakeport employs approximately 50 regular, full-time positions.



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#### 3. DEADLINE AND CONTACT INFORMATION

All interested parties should submit proposals no later than 5:30pm, February 6, 2023. Late proposals will not be considered. Proposers are responsible for ensuring that submissions are received before the stated due date and time. Electronic submittals are acceptable and should be submitted according to the timeline to the individual specified below.

All inquiries related to this RFP should be directed to the Assistant City Manager/ Finance Director by means below:

Phone: (707)263-5615 ext 301

Email: [nwalker@cityoflakeport.com](mailto:nwalker@cityoflakeport.com)

#### 4. SCOPE OF SERVICES

For CDBG business loan program activity, the City of Lakeport requires the services of a program operator to furnish all materials and services as detailed below to properly conduct a CDBG funded business assistance program. The business loan program must comply with the most current adopted program guidelines and all state and federal requirements. Administering the business assistance program will require the following scope of services:

- A. Business Loan Program Project Application Outreach – the selected consultant will market the program, respond to inquiries, and process business loan applications in accordance with city program guidelines and CDBG state and federal requirements. Keep records of all applicants and ensure all eligible applicants receive proper technical assistance to move through the application process. Ensure applicants provide proper financial information that will allow the consultant to perform underwriting pursuant to the CDBG requirements and conduct “cash flow” analysis to ensure the applicant meets the requirements to receive the funding.
- B. Business Loan Processing – the CDBG program requirements are outlined as part of the program, the following outlines a narrative of what is anticipated under the program:
- C. Assess need for business loan applicants, provide technical assistance and, as needed, provide proper referrals to local Small Business Development Corporations (SBDC). For business startups, ensure proper business plan is developed and market analysis is completed to document sales and capacity to execute. Run proper credit report for review and analysis of creditworthiness of applicant. Review personal financial information to complete personal financial analysis. Review past three years of historic financial records, using tax returns, to complete analysis of historic financial viability of business. Review future financial projections of the business, including required costs of job creation, with borrower and verify all assumptions behind the projection figures. Ensure applicant file is completely documented with site control information, all project costs, all sources of funding. Confirm final “aggregated scope of work” for the project and assist City/County staff in confirming federal overlay requirements triggered by the project (NEPA, labor standards, relocation). Confirm that the project will meet HUD underwriting standards. Confirm that the project will meet a national objective and public benefit requirement (create or retain permanent full time job positions and have over half of job



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positions available to low and moderate income persons). Work with city staff and State CDBG staff in getting Department's written loan approval. Process loan approval with city staff/city loan approval procedures.

- D. Loan Closing - prepare loan documents for closing. Ensure all loan conditions are satisfied prior to loan closing. Ensure security instruments are properly recorded. Ensure loan funds are disbursed in accordance with CDBG requirements. Document job creation / retention and low mod job qualifications.
- E. As requested by the City, monitor loan performance to ensure compliance and repayment. This must be done in compliance with city's adopted CDBG loan servicing policies and procedures.
- F. General Administration Activities – Provide the required information to the City and/or city representatives the required data to report on the program accomplishments pursuant to the CDBG microenterprise program requirements. Provide program documents and all information necessary for State approval prior to starting program activities for technical assistance and financial assistance. Assist city staff in completing all required CDBG reports for open grant contracts. Prepare for State CDBG monitoring visits with city staff to ensure CDBG compliance documentation is on file at the city for all open grant contracts.
- G. General Administration Activities – Assist city staff in application preparation for future CDBG funding proposals under annual Notice of Funding Availably released each year.



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### 5. CONTENTS OF THE RESPONSE

Each Proposal must be submitted in compliance with the requirements of this RFP. Clarity and brevity are preferable to volume. Each Proposal must include the following, organized as Sections A through E:

#### A. Cover Letter

Section A of the SOQ shall be a cover letter that must be signed by an official authorized to bind the proposer contractually and shall contain a statement to the effect that the proposal is a firm offer for a 90-day period. All issued addenda should be acknowledged. The letter shall provide the following: name, title, address, telephone number and e-mail address of individuals with the authority to negotiate a contract and bind the consultant to the terms of the contract.

#### B. Executive Summary

Section B must summarize the key provisions of the Proposal, including proposed key personnel, price, and proposed schedule for providing the Services.

#### C. Respondent's Qualifications

Section C must include the number of years Respondent has been in business and a description of Respondent's qualifications, including contact information for general references.

#### D. Project Experience

Section D must identify projects Respondent has completed in the last 10 years that are similar in scope and nature to the City's Project. For each project, provide the project name, project owner, location, description of the services provided, final project cost, and contact information for reference.

#### E. Project Understand and Methodology

Section E must include Respondent's statement for performing the Services identified in the Scope of Services, including proposed schedule and sequencing, assignment of key personnel, and planned measures to ensure cost-effective delivery of the Services and Project completion. In part E of your Proposal, list each of the key personnel who will be assigned to provide the Services, including the following information for each:

1. Name and title
2. Years with your firm
3. Education and qualifications, including degrees, certifications, and licenses (provide license numbers)
4. Summarize relevant experience in relation to the Services
5. Identify proposed role in providing the Services

#### F. Schedule of Tasks

Section G must include a detailed schedule identifying major tasks to be undertaken to conduct the work and timeframe for each task. The schedule shall also identify all meetings, progress reports, deliverables, and the estimated staffing and hours to accomplish each task.



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### G. Budget

In a separate, sealed envelope, or electronic file, the proposed consultant shall submit their proposed fee schedule. The fee schedule shall be broken down by task, for the work to be performed. It shall itemize all items that will be charged to the project. The negotiated contract will specified rates of compensation. The provided detailed cost proposal will be the basis of negotiations. Upon successful completion of fee negotiations, the Consultant shall submit a revised cost proposal to reflect the final agreement. This proposal shall be the basis of reviewing invoicing.

The fee schedule will not be used during the consultant selection process but may be used by the City of Lakeport during the negotiation process.

When invoicing, receipts are required to be submitted for all direct costs, other than fully weighted personnel costs. If sub-consultants are to be used, the breakdown of subcontract costs shall follow the same format as that for the prime consultant.

### 6. SCHEDULE

The following schedule is provided for planning purposes based on current information. However, all dates are subject to revision, including the Proposal deadline, and may be amended by addenda to this RFP:

<b>Activity</b>	<b>Planned Date</b>
RFP Issued	<i>January 3, 2023</i>
Request for Information Deadline	<i>January 27, 2023</i>
Proposal Deadline	<i>February 6, 2023</i>
Interview Finalists <i>(if necessary)</i>	<i>February 13, 2023</i>
Notice of Selection	<i>February 16, 2023</i>
Council Award of Agreement	<i>March 7, 2023</i>
Commence Services	<i>March 8, 2023</i>



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### 7. SELECTION CRITERION

Members of an evaluation team comprised of City staff will independently analyze each Proposal. The evaluation team may choose to interview top firms. Proposals will be evaluated using the following technical criteria

<b>Criteria</b>	<b>Points</b>
Clear understanding of the project requirements and work to be performed	20
Quality of staff and staffing plan, inclusive of subconsultants (Relevant experience and technical competence of the prime consultant and their proposed subconsultants, the personnel assigned to this project, and the degree of participation in the project by the key personnel)	20
Recent experience with similar kinds of projects, references	20
Organization of staffing plan, inclusive of subconsultants	5
Degree of promptness and commitment with which the consultant can commence and complete the work with demonstration of an aggressive and shorter project schedule completion date	10
Demonstrated technical ability and knowledge to perform scope of work	10
The responsiveness and overall quality of the technical Proposal	5
Price	10
Total	100

A contract will be negotiated with the individual or firm determined in the proposal evaluation process to be best suited to perform this project. If a contract cannot be negotiated with the individual or firm submitting the highest rated proposal which is in the best interests of the City of Lakeport, then staff will terminate negotiations with that firm and commence the negotiation process with the firm submitting the second highest rated proposal and with each successive highest rated proposer.

### 8. DISCLAIMERS AND RESERVATION OF RIGHTS

Upon receipt, each Proposal becomes the sole property of the City and will not be returned to the Respondent. At such time as City staff recommends an individual or firm and such recommendation, with any recommended contract appears on the City Council agenda, all proposals accepted by the City shall become a matter of public record and shall be regarded as public, with the exception of those elements of each proposal which are defined by the proposer as business or trade secrets and plainly marked as "Trade Secret," "Confidential," or "Proprietary." Each Respondent is solely responsible for the costs it incurs to prepare and submit its Proposal. The City reserves, in its sole discretion, the right to reject any and all Proposals, including the right to cancel or postpone the RFP or the Project at any time, or to decline to award the Agreement to any of the Respondents. The City reserves the right to waive any immaterial irregularities in a Proposal or submission of a Proposal. The City reserves the right to reject any Proposal that is determined to contain false, misleading, or materially incomplete information.



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#### 9. CONFLICT OF INTEREST

City of Lakeport employees are prohibited from participating in the selection process for this RFP if they have any financial or business relationship with any Respondent. This RFP process will be conducted in compliance with all laws regarding political contributions, conflicts of interest, or unlawful activities, including, but not limited to, the City's Conflict of Interest Policy.

#### 10. MODIFICATION OR WITHDRAWAL OF PROPOSALS

Any proposal received prior to the date and time specified above for receipt of proposal may be withdrawn or modified by written request of the proposer. To be considered, however, any modified proposal must be received by the date and time specified above.

#### 11. PROTEST PROCEDURES

Any protest challenging the City's selection or the selection process must be submitted within five business days following the City's issuance of the Notice of Selection. The protest must be submitted in writing via email to [kingram@cityoflakeport.com](mailto:kingram@cityoflakeport.com), and must clearly specify the basis for the protest. The protest will be reviewed by the City Manager in consultation with the City Attorney, and their determination on the protest is final. No public hearing will be held on the protest. Time being of the essence, the City reserves the right to proceed with award of the Agreement and commencement of the Services notwithstanding any pending protest or legal challenge.

#### 12. AFFIRMATIVE ACTION

Prospective respondents should be aware that the Equal Employment Opportunity Requirement of Executive Order 11246, as amended by Executive Order 11275, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practices Act and other federal and state laws pertaining to equal employment opportunity are applicable to any contract awarded by the City of Lakeport.

#### 13. FORM OF AGREEMENT

A copy of the City's standard Professional Services Agreement ("Agreement") is attached as Exhibit A to this RFQ and incorporated herein. By submitting a Proposal, the Respondent agrees that it will enter into the Agreement using the attached form with no exceptions to the form of the Agreement.





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### 14. FUNDING AND GRANT REQUIREMENTS

#### **FEDERAL TERMS AND CONDITIONS:**

During the performance of the contract, the Contractor must agree to comply with all applicable Federal laws and regulations including but not limited to the following:

#### **AFFIRMATIVE ACTION:**

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the United States Department of Agriculture and subject to 24 CFR 85.36(e). The City hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award. Minority and women-owned and operated businesses encouraged to apply.

#### **NON-DISCRIMINATION CLAUSE:**

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### **EQUAL OPPORTUNITY:**

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
- B. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not

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be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

- C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will *be* binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- H. The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- I. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or



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negotiation of a contract.

- J. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
- K. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.
- L. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

#### **INSURANCE:**

Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

#### **DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE FEDERAL REGULATORY REQUIREMENTS UNDER 24 CFR 85.36(e):**

The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

- A. Affirmative steps shall include:
  - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;



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- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

#### **REQUIREMENTS AND REGULATIONS PERTAINING TO DATA AND DESIGN:**

All data and design and engineering work created under this Agreement shall be owned by the City and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the City.

#### **COMPLIANCE WITH CLEAN AIR ACT AND CLEAN WATER ACT:**

Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).

- A. Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).
- B. Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15).

#### **COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT (Pub. L. 94-163, 89 Stat. 871):**

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Exhibit A Sample Professional Services Agreement

Professional Services Agreement  
(City of Lakeport / Company or Individual)

**PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES**  
(City of Lakeport / *[Company or Individual]*)

**1. IDENTIFICATION**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into as of the last date indicated below by and between the City of Lakeport, a California municipal corporation (“City”), and *[enter consultant’s (company’s) name]*, a *[insert consultant’s state of incorporation]* *[insert consultant’s legal status e.g., individual, partnership, corporation, nonprofit public benefit corporation, limited liability company, etc.]* (“Consultant”) (collectively, “parties”).

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: \_\_\_\_\_ *[insert description of consultant’s services]*.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 “Scope of Services” means such professional services as are set forth in Consultant’s \_\_\_\_\_ *[insert consultant’s proposal date]* proposal to City attached hereto as “Exhibit A” and fully incorporated herein by this reference.
- 3.2 “Approved Fee Schedule” means such compensation rates as are set forth in Consultant’s \_\_\_\_\_ *[insert date fee schedule submitted to City]* fee schedule to City attached hereto as “Exhibit B” and fully incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.3 “Commencement Date” means \_\_\_\_\_ *[enter commencement date]*.
- 3.4 “Termination Date” means \_\_\_\_\_ *[enter termination date]*.

Professional Services Agreement  
(City of Lakeport / Company or Individual)

3.5 “City Agreement Administrator” means \_\_\_\_\_ [enter name of City’s contact for purposes of Agreement].

3.6 “Consultant Project Administrator” means \_\_\_\_\_ [enter name of Consultant’s contact for purposes of Agreement].

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall terminate at 11:59 p.m. on the Termination Date unless extended in writing by mutual agreement of the parties or terminated earlier in accordance with Section 18 (“Termination”) below.

**5. CONSULTANT’S SERVICES**

5.1 Time is of the essence in Consultant’s performance of services under this Agreement.

5.2 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) unless specifically approved in advance and in writing by City. Consultant shall notify the City Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum amount payable above. Consultant shall concurrently inform the City Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the maximum amount payable above.

5.3 Consultant shall perform all work to the highest standards of Consultant’s profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).

5.4 Consultant shall comply with all applicable federal requirements in Exhibit C, “Federal Requirements – FHWA” (the “Federal Requirements”), which is incorporated by reference into this Agreement. In the event of any conflict between this Agreement and the Federal Requirements, the Federal Requirements shall

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control.

- 5.5** Consultant represents that it has advised City in writing prior to the date of signing this Agreement of any known relationships with third parties, City Council Members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 5.6** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.7** Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. \_\_\_\_\_ *[enter name of Consultant's contact for purposes of Agreement]* shall be the Consultant Project Administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No other person shall serve as Consultant Project Administrator without City's prior written consent.
- 5.8** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 5.9** Consultant shall be responsible to City for all services to be performed under this Agreement. All subconsultants shall be approved by the City Agreement Administrator and their billing rates identified in the Approved Fee Schedule, Exhibit B. City shall pay Consultant for work performed by its subconsultants (including labor) only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subconsultants.

Professional Services Agreement  
(City of Lakeport / Company or Individual)

- 5.10 Consultant shall notify the City Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subconsultant. Change of ownership or control of Consultant's firm may require an amendment to the Agreement.
- 5.11 This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Consultant acknowledges that prevailing wage determinations are available for the performance of inspection and survey work.

**6. COMPENSATION**

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Approved Fee Schedule in full satisfaction for such services.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for services performed pursuant to this Agreement. Each invoice shall identify the maximum amount payable above, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall include a copy of each subconsultant invoice for which reimbursement is sought in the invoice.
- 6.3 The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 6.4 Payments for any services requested by City and not included in the Scope of Services may be made to Consultant by City on a time-and-materials basis pursuant to the Approved Fee Schedule and without amendment of this Agreement, so long as such payment does not cause the maximum amount payable above to be exceeded.

**7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as "written products") shall be and



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remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

**8. RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as its employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation, and other applicable federal and state taxes.

**9. AGREEMENT ADMINISTRATOR**

In performing services under this Agreement, Consultant shall coordinate all contact with City through its City Agreement Administrator. City reserves the right to change this designation upon written notice to Consultant. All services under this Agreement shall be performed at the request of the City Agreement Administrator, who will establish the timetable for completion of services and any interim milestones.

**10. INDEMNIFICATION**

- 10.1** The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect

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City as set forth herein.

- 10.2** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other expenses of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 10.3** City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 of this Agreement and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4** The obligations of Consultant under this Section 10 of this Agreement are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly waives its statutory immunity under such statutes as to City, its officers, agents, employees and volunteers.
- 10.5** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in Section 10 of this Agreement from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall

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include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6** City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.
- 10.7** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- 10.8** Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in CalPERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for CalPERS benefits.

**11. INSURANCE**

- 11.1** During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement.
- 11.2** Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to City as an Additional Insured as provided below. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.
- 11.3** Insurance required under this Agreement shall be of the types set forth below, with minimum coverage as described:

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- 11.3.1** Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 11.3.2** Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.3.3** Worker's Compensation insurance if and as required by the laws of the State of California.
- 11.3.4** Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.
- 11.4** Consultant shall require each of its subconsultants to maintain insurance coverage that meets all of the requirements of this Agreement provided however, that the City Agreement Administrator may waive the provision of Errors and Omissions Insurance by subconsultants in his or her sole discretion.
- 11.5** The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.6** Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.7** At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming City and its officers, employees, agents and volunteers as Additional Insureds. Prior to commencement of work under this Agreement, Consultant shall file with City's Risk Manager such certificate(s) and Forms CG 20 10 07 04 and CG 20 37 07 04 or the substantial equivalent showing City as an Additional Insured.
- 11.8** Consultant shall provide proof that policies of insurance required by this Agreement

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expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

- 11.9** The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as Additional Insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.10** The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.11** All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.
- 11.12** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.13** Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.
- 11.14** Consultant may be self-insured under the terms of this Agreement only with express written approval from the City.

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**11.14.1** All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability.

**11.14.2** Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

**11.15** City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

**12. MUTUAL COOPERATION**

**12.1** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

**12.2** If any claim, action, or proceeding is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim, action, or proceeding.

**13. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is

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legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

**14. RECORDS AND INSPECTIONS**

Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. City shall further have the right to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition.

**15. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

**16. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

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If to City:

[Name]

City of Lakeport

[Department/Division]

225 Park Street

Lakeport, CA 95453

Telephone: (707) 263-5615

Facsimile: (707) 263-8584

If to Consultant:

[Name]

[Company]

[Address]

[Address]

Telephone:

Facsimile:

With courtesy copy to:

David J. Ruderman, City Attorney  
Colantuono, Highsmith & Whatley, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, California 95945-5091  
Telephone: (530) 432-7357  
Facsimile: (530) 432-7356

## 17. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 10, Section 13, Paragraph 12.2 and Section 14 of this Agreement shall survive the expiration or termination of this Agreement.

## 18. TERMINATION

- 18.1** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be promptly returned to City upon the termination or expiration of this Agreement.
- 18.2** If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement as provided in Section 5.2 above and as otherwise provided in this Agreement.



**19. GENERAL PROVISIONS**

- 19.1.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.2.** In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 19.3.** The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 19.4.** The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.
- 19.5.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.6.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants'

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and attorneys' fees expended in the action. The venue for any litigation shall be Lake County, California and Consultant hereby consents to jurisdiction in Lake County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

- 19.7.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 19.8.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.9.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the City and Consultant.
- 19.10.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination

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clause.

**19.11.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

**TO EFFECTUATE THIS AGREEMENT,** the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“City”

“Consultant”  
[insert name]

By \_\_\_\_\_

By: \_\_\_\_\_  
[insert name], insert title]

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
[insert name], insert title]

By \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
David J. Ruderman, City Attorney

Date: \_\_\_\_\_

**“EXHIBIT A”  
SCOPE OF WORK**

**“EXHIBIT B”  
APPROVED FEE SCHEDULE**

**“EXHIBIT C”**  
**FEDERAL REQUIREMENTS – CDBG**

**Federal Terms and Conditions**

**FEDERAL TERMS AND CONDITIONS:**

During the performance of the contract, the Contractor must agree to comply with all applicable Federal laws and regulations including but not limited to the following:

**AFFIRMATIVE ACTION:**

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the United States Department of Housing and Urban Development (HUD) and subject to 24 CFR 85.36(e). CITY hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award. Minority and women-owned and operated businesses encouraged to apply.

**SECTION 3:**

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the HUD, Community Development Block Grant Program, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the project area and that the contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project. Regulations for implementing the Section 3 clause are contained in 24 CFR 135, as amended, and as specified in the project specifications.

**NON-DISCRIMINATION CLAUSE:**

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

“EXHIBIT C”  
FEDERAL REQUIREMENTS – CDBG

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

**EQUAL OPPORTUNITY:**

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
2. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City Setting forth the provisions of this nondiscrimination clause.
3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take

“EXHIBIT C”  
FEDERAL REQUIREMENTS – CDBG

such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
9. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
10. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
11. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.
12. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.



“EXHIBIT C”  
FEDERAL REQUIREMENTS – CDBG

**CONFLICT OF INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF CONTRACTORS, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS:**

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

**INSURANCE:** Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

**DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE FEDERAL REGULATORY REQUIREMENTS UNDER 24 CFR 85.36(e):** The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

1. Affirmative steps shall include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

**COPELAND “ANTI-KICKBACK” ACT (18 U.S.C. 874):**

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

**COMPLIANCE WITH ALL FEDERAL LABOR STANDARD PROVISIONS:**

Contractor shall comply with all provisions contained in the form HUD-4010, Federal Labor Standards Provisions.

“EXHIBIT C”  
FEDERAL REQUIREMENTS – CDBG

**COMPLIANCE WITH SECTIONS 103 AND 107 OF THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-330):**

Contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR part 5, Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

**REQUIREMENTS AND REGULATIONS PERTAINING TO DATA AND DESIGN:**

All data and design and engineering work created under this Agreement shall be owned by the City and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the City.

**REQUIREMENTS AND REGULATIONS PERTAINING TO REPORTING:**

The City, State CDBG, HUD and the Comptroller General of the United States or any of their duly authorized representatives shall be granted access to any books, documents, papers and records of Contractor which are directly pertinent the contract.

**COMPLIANCE WITH CLEAN AIR ACT AND CLEAN WATER ACT:**

Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).

1. Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).
2. Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15).

**COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT (Pub. L. 94-163, 89 Stat. 871):**

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163,89 Stat. 871).

**D/MBE/WBE IMPLEMENTATION GUIDELINES:**

The following information, as applicable, shall be retained by Contractor and produced upon request by General Services if determined by General Services to be necessary to establish the bidder's "good faith efforts" to meet the Disadvantaged/Minority/Women Business Enterprise (D/M/WBE) requirements.

1. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for D/M/WBE participation for this project was placed by the bidder.
2. The names and dates of notices of all certified D/M/WBEs solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the D/M/WBEs were interested.

**“EXHIBIT C”**  
**FEDERAL REQUIREMENTS – CDBG**

3. The items of work for which the bidder requested subbids or materials to be supplied by D/M/WBEs, the information furnished interested D/M/WBEs in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate D/M/WBE participation. Where there are D/M/WBEs available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for D/M/WBEs to bid on.
4. The names of D/M/WBEs who submitted bids for any of the work indicated in (3) above, which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting the D/M/WBE bid was price, give the price bid by the rejected D/M/WBE and the price bid by the selected subcontractor or supplier.
5. Assistance that the bidder has extended to D/M/WBEs identified in (4) above to remedy the deficiency in their sub-bids.
6. To find a D/M/WBE certified firm, you may call (916) 445-3520, go on-line to: <http://www.dot.ca.gov/hq/bep>, or via mail at: D/M/WBE Listing for County, CalTrans - Publications Distribution Unit, 1900 Royal Oaks, Sacramento, CA 95815-3800.

**AUDIT, RETENTION AND INSPECTION OF RECORDS:**

The Contractor agrees that the (City/County), the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Contractor agrees to provide any relevant information requested and shall permit the (City/County), the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq.

The Contractor further agrees to maintain such records for a period of five (5) years after final payment under this Agreement, and that on or before the end of the five (5) year audit/retention period, the Consultant shall release and deliver to the (City/County) all original records and related documentation.