



## **REQUEST FOR PROPOSALS**

**RFP 98-21**

**2018 CDBG Multi-Family Housing Program  
Administrative Oversight**

**RFP Publication Date: January 28, 2022**

**RFP Submission Deadline Date: February 18, 2022**

**Issued by:**

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## **1) RESPONDENT ADMONISHMENT**

Respondents are reminded that it is their responsibility to:

- ✓ Read carefully all of the content of this entire document and address all requirements and follow all procedures of this Request for Proposal (RFP).
- ✓ Ask for clarification before final due date of questions.
- ✓ Immediately inform the City of any problems with this Solicitation.
- ✓ Be complete in response.
- ✓ Submit all responses by the required dates and times.

## **2) INTRODUCTION**

The City of Gridley ("City") is seeking a consulting firm ("Contractor") to administer the City's allocation of \$2,394,037 for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Multifamily Housing Program (MHP) pursuant to the State Department of Housing and Community Development (HCD) CDBG-DR DR18 Disaster Recovery Multifamily Housing Program Policies and Procedures Manual and HCD Multifamily Housing Program Final Guidelines for the City Administration Department. Gridley City intends to award a contract to a consulting firm that will meet the qualification criteria and has successfully performed services on similar programs and projects in the past.

The successful firm will be required to enter into a contract with the City for the services requested in this Request for Proposals (RFP) within a reasonable time after award. A Contractor submitting a proposal must be prepared to use the City's standard contract form rather than its own contract form. The contract will include terms appropriate for this program. Generally, the terms of the contract will include, but are not limited to: (1) completion of the program within the timeframe provided; (2) no additional work authorized without prior written approval; (3) no payment without prior written approval; (4) funding availability; (5) termination of contract under certain conditions; (6) indemnification of the City; (7) approval by the City of any subcontractors; and (8) minimum appropriate insurance requirements. A Model Contract is attached as Exhibit A to this RFP. The City intends to award a contract substantially in the form of the Model Contract to the selected Contractor. RFP respondents should list any exception(s) to the Model Contract in a separate section of their proposal.

## **3) BACKGROUND**

The year 2018 was the deadliest year for wildfires in California's history. In August 2018, the Carr Fire and the Mendocino Complex Fire erupted in northern California, followed in November 2018 by the Camp and Woolsey Fires. These were the most destructive and deadly of the dozens of fires to hit California that year. In total, it is estimated over 1.6 million acres burned during 2018. The Camp Fire became

California's deadliest wildfire on record, with 85 fatalities.

As a result, the Federal Emergency Management Agency (FEMA) made disaster assistance available for two presidentially declared disasters, DR-4407 covering Gridley, Los Angeles, and Ventura counties, and DR-4382 covering Shasta and Lake counties.

In recognition of the unmet recovery needs, an allocation of \$1,017,399,000 in Community Development Block Grant-Disaster Recovery (CDBG-DR) funds was granted to the State of California on January 27, 2020 through 85 FR 4681 under Public Laws 115–254 and 116–20, which cover DR-4382 and DR-4407. These funds are administered by the U.S. Department of Housing and Urban Development (HUD) and are intended primarily to assist housing recovery and to benefit low- and moderate income households impacted by the fires. The California Department of Housing and Community Development (HCD) is the lead and responsible agency for administering these CDBG-DR funds.

CDBG-DR is a flexible funding source, and may be spent on a variety of housing, infrastructure and economic revitalization projects and programs. However, per the Federal Register and HUD guidance, the state will prioritize housing and housing related needs first. Due to federal regulations, all funds must be spent in areas that were impacted by the July-September 2018 and November 2018 fires. Of this, 80 percent must be spent in locations HUD has identified as the Most Impacted and Distressed (MID) Areas (these are all of Gridley, Lake, Los Angeles, and Shasta counties). Finally, CDBG-DR requires at least 70 percent of funds must be spent to benefit low-to-moderate income (LMI) persons.

The State of California Proposed Action Plan for Disaster Recovery August 2020 for submission to the U.S. Department of Housing and Urban Development to fulfill requirements related to Community Development Block Grant (CDBG-DR) Funds in Response to 2018 Disasters (FEMA DR-4382 and DR-4407).

The California Department of Housing and Community Development (HCD) made \$250,687,114 in allocations available in 2019 CDBG-DR funding to support the Multifamily Housing Program (MHP) of which \$152,610,073.24 is allocated to jurisdictions within Butte County. The City's allocation is \$2,394,037. This funding is in response to the State's unmet recovery needs for Federal Emergency Management Agency Major Disaster Declarations DR-4407, which includes the November 2018 Camp Fire. The MHP programs are funded to meet the unmet rental housing need.

MHP projects may include apartment complexes, scattered sites, and mixed-use developments; including large rental project development with units of eight or more, and small rental assistance open to landlords with one to four units. Eligible activities include reconstruction, rehabilitation and new housing construction. Eligible projects must serve low to moderate income households in affordable housing units. Housing project types include large family, special needs, seniors, supportive housing, and at

high risk.

The following are links to information about the MHP. The RFP respondent is responsible for referencing the most recent version of each document:

HCD CDBG-DR (CDBG-DR) 2018 Disasters Website

<https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2018/index.shtml>

State of California 2018 CDBG-DR Action Plan for Disaster Recovery

[https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2018/docs/hcd-cdbg-dr-2018\\_ap-final-ada-english.pdf](https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2018/docs/hcd-cdbg-dr-2018_ap-final-ada-english.pdf)

MHP Final Guidelines

<https://www.hcd.ca.gov/grants-funding/active-funding/mhp/docs/round-1-mhp-final-guidelines.pdf>

CDBG-DR DR18 Disaster Recovery MHP Policies and Procedures Manual

<https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2018/docs/18dr-mhp-pp-v1-final.pdf>

Policy and Procedures Manual Appendix A: Disaster Recovery Multifamily Housing Program Subrecipient Project Solicitation Checklist

<https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2018/docs/18dr-mhp-appx-a-final.pdf>

Policy and Procedures Manual Appendix B: DR-MHP Development Application Review and Underwriting Checklist

<https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2018/docs/18dr-mhp-pp-appendix-b-final.pdf>

#### **4) SCOPE OF SERVICES**

The Contractor selected for this work will administer the City CDBG-DR MHP allocation in accordance with the DR-MHP Policies and Procedures. The areas outlined below define the key areas for the scope of work, and all proposals should fully adhere the DR-MHP Policies and Procedures. However, the City will give due consideration to alternative approaches for administering the City's CDBG-DR MHP allocation.

The City anticipates publishing a solicitation for large and small MHP projects through a Request for Proposal process. The selected Contractor, in coordination with the City, will review and rank the applications to select the most viable projects that will support community recovery of needed housing. The Contractor will then underwrite each prospective applicant and assist in the preparation of the Project Application to the HCD. The Contractor will facilitated the project implementation, monitoring, and

development of Agreements and reports. Post-construction, the Contractor will monitor projects for two years of operations.

**AREA 1: Solicitation Review and Analysis of Large and Small Multi-Family Housing Projects**

- Implement local Project Solicitation, Selection, and Appeals Process for large MHP, including application rounds and/or open applications.
- Evaluate large MHP solicitation and selection process.
- Develop a Project Solicitation for small unit MHP.
- Implement local Project Solicitation, Selection, and Appeals Process for small MHP, including application rounds and/or open applications.
- Review applications according to, but not limited to, DR-MHP Development Application Review and Underwriting Checklist and the Uniform Multifamily Regulations; local prioritization criteria; application benchmarks including eligible activities, project type eligibility, and national objective criteria; quality of the application according to long-term viability, verification of financial feasibility, cost reasonableness, project timeliness and schedule; Developer capaCity, and compliance with Article XXXIV, among other criteria.
- Rank applications according to federal, state and local priorities and criteria, provide recommendations to the City for selection and provide written justification to HCD.

**AREA 2: Project Application and Underwriting Oversight**

- Complete the Environmental Review Process for each application.
- Coordinate with the City the submission of Project Applications.
- Oversee underwriting of each project with HCD, including costs, financial feasibility, market demand, Developer qualifications, environmental review, land use, and certifications.

**AREA 3: Development Agreement Creation and Execution**

- Respond to any deficiencies in the City's Due Diligence submission to HCD, including development City policies and procedures necessary for program implementation.
- Lead the coordination of the legal documents outlining the program operations including the Master Standard Agreement, Notice to Proceed, and Regulatory Agreement.
- Create development agreements for each project based on federal, state and local requirements.

**AREA 4: Project Requirement Development and Process Oversight**

- Coordinate loan and closing process and documents with City staff and HCD.
- Ensure projects are developed according to Eligible Activities, Project Eligibility, and Project Priority criteria and the Contract Regulatory Agreements.
- Oversee adherence to Construction Standards and Requirements.
- Oversee project operations, including the legal documentation, agreements, conditions, labor and wage requirements, procurement, and performance goals and timelines.
- Review and approve Developer Management Plan prior to construction.
- Review and approve Marketing Plan for compliance and local demographic and housing needs.

- Develop Uniform Relocation Assistance and Real Property Acquisition Act Policy for multifamily housing projects.
- Develop Affirmative Fair Housing Marketing Plan and Lease Up Policy for small rental projects.
- Provide Federal Labor Compliance guidance to developers in pre-construction phase and monitor throughout construction phase.
- Participate in the development of CDBG-Disaster Recovery Infrastructure grant applications that link to proposed multifamily housing projects.

#### AREA 5: Fiscal Review and Oversight

- Review fiscal requirements for projects including Notice to Proceed Rider, committed sources of investment funding, Duplication of Benefits, cost reasonableness, eligible costs, form of assistance, and allocation methodology.
- Monitor and report Developer project Income.
- Oversee disbursement of funds according to agreements, recapturing of funds and budget monitoring.

#### AREA 6: Project Compliance Monitoring

- Develop a system in which projects and developers can be effectively and efficiently monitored for compliance during the first two years of implementation, including construction, tenant selection, management, and annual certifications according to the Master Standard Agreement and CDBG-DR Grant Administrative Manual.
- Conduct annual compliance monitoring including physical, project and financial monitoring for two years.
- Coordinate contract monitoring with HCD, including documentation and in-person monitoring.
- Develop honed long-term monitoring process for the City to implement over the affordability lifetime of the projects.

#### AREA 7: Report Development

- Oversee all reporting as specified in the Master Standard Agreement.
- Provide monthly updates to City staff.
- Prepare monthly status reports for each project.
- Prepare the annual report and coordinate annual audit.

#### AREA 8: Training and Technical Assistance

- Provide training and technical assistance to Developers and Project Managers on HUD, HCD, and local requirements for project development and implementation.
- Provide or recommend training and technical assistance to City on the development, execution, and monitoring of Multi-Family Housing projects.
- Participate in HCD technical assistance of program requirements, risk assessment, compliance, and capacity building.

- AREA 9: Conduct annual compliance monitoring during period of affordability
- Physical monitoring including the inspection of the exteriors of all buildings, common spaces, and interiors of income restricted units.
  - Project monitoring including affordable rent, certification of tenant income, LMI benefit, affirmative marketing and fair housing requirements.
  - Financial monitoring including review of financial statements, debt service obligations, reserve accounts.

### **Scope of Work Estimated Timeline**

June 1, 2022: Release Request for Proposals for large MHP

June 29, 2022: Section of Consulting Contractor

August 2022: Selection of large MHP Projects – Round 1

August 2022: Release Request for Proposals for small MHP

September 2022-December 2022: Open Application Submission for large and small MHP

December 2022: Release of Request for Proposals – Round 2 (optional)

December 31, 2022: Final Date to submit Project Applications

January 2023: HCD Reallocation of Unused Funds

December 31, 2023: Final Date for HCD to Issue Notices(s) to Proceed

May 31, 2026: Final Date to Submit Certificate of Occupancy for all Projects

December 2026: HCD-HUD Grant Closeout

*\*All deadlines are subject to change.*

## **5) FORMAT FOR PROPOSALS**

Responses to the Request for Proposals must be made according to the requirements set forth in this section, both for content and for sequence. Failure to adhere to these requirements, or inclusion of conditions, limitations or misrepresentations in a response may be cause for rejection of the submittal. Use 8-1/2" x 11" sheets (fold outs are acceptable for charts, etc.). Type size must be large enough to be easily legible, but shall not be smaller than 10 point. The City shall receive all Submissions no later than **February 18, 2022 at 5:00 p.m. PST.**

- a) The response shall include a cover letter, a table of contents and all items listed below and shall be in the following format:

Submissions shall contain one (1) signed, unbound original and three (3) hard copies, printed material on 8-1/2" X 11" paper.

One (1) electronic copy shall also be provided on a thumb drive.

Submissions shall be in the order noted below.

Submissions may also include color and fold out charts and graphs.

**Mandatory Content and Sequence of Submittal:**

- i) Cover Letter shall be a maximum two-page Cover Letter and introduction, and shall include the name and address of the consulting firm submitting the proposal, together with the name, address and telephone number of the contact



person who will be authorized to make representations for the Contractor, the Contractor's federal tax ID number and a list of subcontractors, if any. The cover letter shall include a statement that the proposal is valid for 90 days after receipt.

- ii) Table of Contents shall be a detailed Table of Contents and shall include an outline of submittal, identified by sequential page number and by section reference number and section title as described therein.

iii. Experience Summary shall be a maximum of eight pages (not including resumes) in length and shall describe the Contractor's experience, including length of time, in administrative oversight of multifamily housing programs and projects. Experience and focus in the public sector is of vital importance. Describe experience administering HUD and/or HCD programs. Describe related past programs completed along with a discussion comparing similarities with this proposed program. Please provide a comprehensive narrative history of the Contractor and its experience in providing administrative oversight of multifamily housing programs to government municipalities, counties and departments.

This section shall also contain a comprehensive list of at least three references, preferably municipalities or government agencies, wherein similar services were performed within the past five years. At a minimum, the following information must be included for each client reference:

- Client name, address, contact person name, title, telephone number, and email address.
- Description of services provided similar to the services outlined in the Draft Scope of Work.

iv. Contractor Capabilities shall be a maximum of six pages entitled "Contractor Capabilities," and shall include a description of the proposing Contractor's resources and organizational structure for successfully developing and completing this program. Resources may include Contractor's stability, staffing, support services, product quality/availability, method of delivery, etc. List all key personnel assigned to the program by level and name. Provide a description of their background, along with a summary of their experience in providing similar services for governmental agencies, and any specialized expertise they may have. A resume(s) should be included for any key personnel to be assigned to this program.

v. Cost shall provide a detailed budget, including a cost breakdown associated with the scope of services, including staff hours and billing rates, administrative costs, and the work of sub-consultants. Provide an actual cost, not-to-exceed amount for all direct costs, reimbursables, escalation costs or any other

charges. Prices quoted shall be valid for at least ninety (90) days following the proposal submission deadline and if a contract is entered into as a result of this RFP, shall become fixed for the term of the contract.

vi. Draft Scope of Work shall be identified as “Attachment III – Scope of Work” for incorporation in the Model Contract as the final contract to be awarded to the successful Contractor. This is the document in which the proposing Contractor are requested to describe the work they will perform to complete this program (See Section 4 of RFP). Should there be any tasks that are expected to be performed by the City, these should also be clearly described as City tasks in the Draft Scope of Work. A timeline to complete the tasks should be included. If the proposing Contractor included a not-to-exceed price in the proposal, proposed billing rate for all reimbursable expenses should be included in the Draft Scope of Work.

## **6) SELECTION PROCESS**

The selection committee may include representatives from the Administration and Finance Departments of the City. The criteria for selecting the Contractor is provided below:

### Experience and References

- The Contractor demonstrates sufficient similar experience in the kind of work required.
- The Contractor demonstrates a reputation of being reliable, delivering on schedule, and performing tasks to the satisfaction of its clients.

### Capabilities

- The Contractor demonstrates the resources and capability to meet the needs of the City for the services.
- The proposed Scope of work demonstrates and understanding of the necessary tasks, processes, and time required to successfully provide the services.
- The Contractor demonstrates sufficient stability and ability to meet the needs of the City for the full duration of the program.
- The Contractor demonstrates adequate staffing, or a feasible staffing expansion plan, to accomplish the proposed Scope of Work.

### Cost

- The costs are reasonable for the proposed Scope of Work.

The City may discuss the proposals and negotiate modifications of the proposal, draft scope of work, terms and conditions and pricing with the prospective Contractor as a part of the selection process.

## **7) SUBMITTAL EVALUATION**

Overall criteria used to evaluate responses to include:

<b>Criteria</b>	<b>Weight</b>
Experience and References:	35%
Capabilities:	40%
Cost:	25%
Total:	100%

Selection may consist of two levels of review. Level I will consist of evaluating the proposals for the purpose of establishing the most qualified respondents. Level II will be used to select the finalist. This level may include a request for a presentation/demonstration from the finalists, proposal fact finding and negotiation of contract terms and conditions at no cost to the City. The presentation/demonstration may be web-based.

The City may discuss the proposals and negotiate modifications of the proposal, draft scope of work, terms and conditions and pricing with the prospective Contractors as a part of the selection process.

## **8) RULES OF PROCUREMENT**

### **Timeline Summary**

<b>Event</b>	<b>Anticipated Date/Time (Subject to Change)</b>
Solicitation Publication	January 28, 2022
Final Date to Submit Questions and Requests for Clarification	February 15, 2022
RFP Submittals Due	February 18, 2022 at 5:00pm PST
Preliminary Evaluation Completed	February 25, 2022
Presentation/Demonstration (if desired)	March 4, 2022
Evaluation Completion	March 11, 2022
Award of Contract	March 18, 2022

## City Contact Information

Any and all communication regarding this Solicitation shall be in writing and directed to:

Elisa Arteaga  
Finance Director  
City of Gridley, California  
685 Kentucky Street  
Gridley, CA 95948  
530-846-3631  
earteaga@gridley.ca.us

This person will serve as the City's contact person for this program who will also respond directly for questions and inquiries during the solicitation. **Do not** contact other City personnel or selection committee members regarding this program or the selection procedures.

### Questions:

Questions and requests for clarification may only be submitted by e-mail. Verbal and phone inquiries will not be answered. All questions and requests for clarification shall be submitted no later than **February 15, 2022**. The City will provide answers and clarifications by posting an addendum(s) through the City website up to February 17, 2022 so all proposing Contractors receive consistent information. It is the responsibility of all interested Contractors to access the website for this information. **Questions received after February 17, 2022 will not be answered.**

## 9) CITY NOTICES

All proposing Contractors responding to this RFP should note the following:

- a) All work performed for Gridley City, including all documents associated with the program, shall become the exclusive property of Gridley City.
- b) The selected Contractor is expected to perform and complete the program in its entirety.
- c) Any and all costs including travel, arising from development and delivery of a response to this RFP incurred by any proposing Contractor shall be borne by the Contractor without reimbursement by Gridley City.
- d) The selected Contractor shall remain an independent Contractor, working under his/her own supervision and direction and is not a representative or employee of Gridley City. The Contractor agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Contract.
- e) The opening of proposals in response to this Solicitation is not subject to

attendance by the general public. This restriction is necessitated by the fact that the contract award is subject to negotiations, and it would be unfair for competing companies to know the prices quoted by one another.

- f) The successful Contractor must be prepared to begin work promptly following execution of the contract and is expected to complete the program in its entirety.
- g) Issuance of this Solicitation in no way constitutes a commitment by the City to award a contract. If the City determines it is in its best interest to do so, no Contractor may be selected and no contract may be executed.
- h) Upon acceptable negotiations and contract award, the Contractor shall be required to execute the standard City Contract as provided in Exhibit A and comply with City insurance requirements. The City may modify the contractual requirements of the contract prior to execution of a contract for services.
- i) The City reserves the right to request additional information from Contractors that have submitted a response to this Solicitation and to enter into negotiations with more than one Contractor should a contract be awarded or to award a purchase order or contract to the Contractor (s) with the most favorable quotation without conducting negotiations. The City reserves the right to award more than one contract if it is in the best interest of the City.
- j) The City reserves the right to reject any or all submittals received if the City determines that it is in its best interest to do so. Further, the City may cancel or amend this Solicitation at any time and may submit similar solicitations in the future.
- k) The City may reject any submittal that does not meet all of the mandatory requirements of this Solicitation, is conditional or is incomplete.
- l) The City may request clarification of any submitted information and may request additional information on any or all responses provided and may waive minor inconsistencies deemed to be irrelevant.
- m) Contractors that submitted a proposal in response to an RFP but were unsuccessful in their attempt to obtain a contract or recommendation for contract award may request a debriefing to learn the general reasons for selection of a competitor for contract award. Requests for debriefings shall be directed to the Elisa Arteaga, Finance Director, City of Gridley, 685 Kentucky Street, Gridley, CA 95948. Debriefings may be conducted via telephone, Email or during a face-to-face meeting at the City offices in Gridley, California.
- n) Contractors that have received a debriefing, but continue to feel aggrieved in connection with the solicitation or award of a contract may submit a protest to the Elisa Arteaga, Finance Director, City of Gridley, 685 Kentucky Street, Gridley, CA

95948. All protests must be made in writing, signed by an individual authorized to sign the submitted proposal, and must contain a statement of the reason(s) for the protest: citing the law, rule, regulation or procedure on which the protest is based. Contractor's capabilities, program characteristics and/or pricing features that were not included in the Contractor's proposal shall not be introduced during the protest process. The protest shall be submitted within seven (7) working days after such aggrieved Contractor knows or should have known of the facts giving rise thereto or within seven working days following the debriefing.

- o) The withdrawal of any submittal must be made in writing prior to the required submission date and time, and must be signed by an authorized representative of the Contractor. An error in the submission may cause the rejection of that submittal. However, the Contractor may reissue a new or modified submittal prior to the date and time required for submission.

## **10)MODEL CONTRACT**

The Contractor selected shall be expected to execute a contract substantially as the one shown as **Exhibit A**. However, City reserves the right to substitute Exhibit A, Model Contract with a different template if deemed necessary.

## **11)DISCLOSURE OF INFORMATION**

All information and materials submitted to the City in response to this RFP may be reproduced by the City for the purpose of providing copies to authorized City personnel involved in the evaluation of the proposals, but shall be exempt from public inspection under the California Public Records Act until such time as a Contract is executed. Bid awards are a matter of public record. Once a Contract is executed, proposals submitted in response to this RFP are subject to public disclosure as required by law. Your submission of a proposal is considered your consent to the City's disclosure of the proposal. The City shall not be liable for disclosure of any information or records related to this procurement.

# **EXHIBIT A** **MODEL CONTRACT**

This Contract, dated as of the last date executed by the City of Gridley is between the City of Gridley, a political subdivision of the State of California, hereinafter referred to as "CITY", and the professional service contractor indicated in the variable information table below, hereinafter referred to as "CONTRACTOR."

<b>VARIABLE INFORMATION TABLE</b>					
<b>Term of This Contract</b>					
<b>Term Begins</b>			<b>Term Completion Date</b>		
On Following Date			On Following Date		
City Department					
<b>Basis of Price (Do Not <input checked="" type="checkbox"/> More Than One of the Following Four Blocks)</b>					
Price	\$	Fixed Price	Annual Price	Monthly Price	Hourly Rate
Not-to-Exceed Price		\$	<input checked="" type="checkbox"/> if Reasonable Expenses are authorized in addition to Hourly Rate		
<b>CONTRACTOR Contact Information</b>			<b>CITY Contact Information</b>		
CONTRACTOR			Project Manager		
Address			Address		
City, State & ZIP			City, State & ZIP		
Telephone			Telephone		
Email			Email		

**WHEREAS**, CITY, through the CITY Department identified above, desires to have work described in the Attachment III - Scope of Work performed; and

**WHEREAS**, CONTRACTOR possesses the necessary qualifications to perform the work described herein;

**NOW THEREFORE BE IT AGREED** between the parties to this Contract that this Contract is subject to the provisions contained in the following attachments, which are made a part of this Contract. Should there be any conflicts between this Contract and the attachments that are incorporated herein precedence shall first be given to the provisions of this Contract followed by the attachments, in descending order, as indicated below:

- Attachment I – Terms and Conditions (including Exhibit "A")
- Attachment II – Insurance Requirements for Professional Services Contract
- Attachment VI – Professional Credentials
- Attachment III – Scope of Work
- Attachment V – Regulatory Compliance Requirements

By signature below, the department head or his or her deputy certifies that no unauthorized alterations have been made to the Attachment I – "Terms and Conditions" and/or the Attachment II – "Standard Insurance Requirements."

_____ Typed or Printed Name	_____ Signature	_____ Date
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This Contract and the above listed Attachments represent the entire undertaking between the parties.

**CITY**

**CONTRACTOR**

By \_\_\_\_\_  
Cliff Wagner  
City Administrator

Date

\_\_\_\_\_  
Date

REVIEWED FOR CONTRACT POLICY COMPLIANCE

REVIEWED AS TO FORM  
Tony Galyean  
GRIDLEY CITY COUNSEL

By \_\_\_\_\_

By \_\_\_\_\_

## ATTACHMENT I TERMS AND CONDITIONS

1. **Scope of Work.** The work to be undertaken is identified in the attached “Attachment III – Scope of Work” which is made a part of this Contract.
2. **Reimbursement.** The work shall be performed for the Fixed price, Annual price, Monthly price or Hourly rate as indicated above in the variable information table, but shall not exceed the Not-to-Exceed Price if included in the variable information table. Reasonable expenses if authorized and specified in addition to the Hourly Rate if both the Hourly Rate block and the block authorizing Reasonable Expenses are checked in the variable information table. Payment shall be made after the Project Manager or designee reviews and approves the work and after submittal of an invoice by the CONTRACTOR. Expenses and or materials if stipulated shall be paid only upon prior approval and with receipts and only after review and authorization by the Project Manager.
3. **City Project Manager.** The CITY Project Manager or designee for this undertaking who will receive payment invoices and answer questions related to the coordination of this undertaking is identified above in the variable information table.
4. **Independent Contractor.** CONTRACTOR is an independent contractor, working under his/her own supervision and direction and is not a representative or employee of CITY nor is the CONTRACTOR a partner or in any way directly affiliated with the CITY. CONTRACTOR agrees to file tax returns, report compensation and pay all applicable taxes on amounts paid pursuant to this Contract.
5. **Ownership.** The CITY retains the exclusive right of ownership to the work, products, inventions and confidential information produced for the CITY by the CONTRACTOR, and the CONTRACTOR shall not disclose any information, whether developed by the CONTRACTOR or given to the CONTRACTOR by the CITY. The parties agree that the CITY will own the work, products, inventions or information produced by the CONTRACTOR pursuant to this Contract.
6. **Confidentiality.** The CONTRACTOR shall comply as follows and in accordance with the required performance of this contract:
  - a. All applications, records, data or any information concerning any individual made or kept by any public office, officer or department obtained by the CONTRACTOR in the performance of duties or as a consequence of performing said duties, shall be the confidential property of the CITY and shall not be communicated, transmitted, reproduced or in any other way conveyed to any person not directly a party to this contract, its terms and conditions in accordance with all applicable laws and regulations including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any implications thereof including destruction of records or data as appropriate under compliance criteria.
  - b. No person will publish or disclose or permit or cause to be published or disclosed any data, facts, figures, list of persons or any other form of information obtained by the CONTRACTOR in the performance of duties or as a consequence of performing said duties. No person shall publish, disclose, or use or permit, or cause to be published, disclosed or used any confidential information pertaining to any individual or group of individuals obtained by the CONTRACTOR in the performance of duties or as a consequence of performing said duties.
  - c. CONTRACTOR agrees to inform all employees, agents, associates and partners on the above provisions and that any person knowingly and intentionally violating the provisions of this clause is guilty of a misdemeanor. CONTRACTOR shall bear equal responsibility for any violation of the provisions of this paragraph.
  - d. CONTRACTOR agrees and understands that if confidential information concerning any individual made or kept by any public office, officer or department is obtained by the



CONTRACTOR and included on any memory device that may be housed in a computer, or other device (such as a "PDA") may become subject to Federal HIPAA requirements and/or any state or local regulations that apply which could result in surrender of the hard drive, sanitization or the destruction thereof in accordance with Department of Defense (DoD) 5220.22-M standard and/or industry standards current to time of the release of the equipment which ever represents the greatest level of (permanent) information destruction. At the very least, at the end of this contract, CONTRACTOR may be required to stipulate to the fact that no such files exist.

7. **Termination.** This Contract may be terminated by either the CITY or CONTRACTOR by a thirty-day written notice. Authorized costs incurred by the CONTRACTOR will be reimbursed up to the date of termination. Notwithstanding anything stated to the contrary herein, this Contract shall expire on the Completion Date indicated in the above Variable Information Table unless the Completion Date is modified by written amendment to this Contract.
8. **Indemnification.** CONTRACTOR agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the CITY, its officers, agents and employees from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including CONTRACTOR, to the extent arising out of or in connection with the negligent acts or omissions or willful misconduct in the performance by CONTRACTOR hereunder, whether or not there is concurrent negligence on the part of the CITY, but excluding liability due to the active negligence or willful misconduct of the CITY. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONTRACTOR or its agents under worker's compensation acts, disability benefit acts, or other employee benefits acts. CONTRACTOR shall be liable to CITY for any loss of or damage to CITY property arising out of or in connection with CONTRACTOR's negligence or willful misconduct.
9. **Right to Monitor/Audit and Associated Liability.** It being understood by the parties hereto that the CITY's funding source herein may be CITY, State and/or Federal appropriation, and therefore CONTRACTOR is responsible for administering the program as described herein, CONTRACTOR agrees to accept responsibility for receiving, replying to and/or complying with an any audit of this project which may be deemed appropriate or required in compliance with CITY, State or Federal mandates and to reimburse the CITY for any liability upon the CITY for any discrepancy resultant from said audit exceptions or for any liability that result from a breach of contract, misrepresentation or inaccuracy.
10. **Record Retention and Availability.** CONTRACTOR shall maintain and preserve all records related to this agreement in its possession (or will assure the maintenance of such records in the possession of any third party performing work related to this agreement) for a minimum period of three (3) years from the effective date of this agreement, or until all State and/or Federal audits are complete, whichever is later. Upon request, CONTRACTOR shall make available copies of these records to CITY, State or Federal Governments' personnel, including but not limited to the State Auditor General. In the event that this contract is related to a FEMA grant record retention shall be three years from the date of the Grant Close-out letter.
11. **Insurance Requirements.** CONTRACTOR shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or be in connection with the performance of the Work hereunder by CONTRACTOR, CONTRACTOR's agents, representatives, employees and subcontractors. At the very least, CONTRACTOR shall maintain the insurance coverage, limits of coverage, and other insurance requirements as described in Attachment II to this Contract.
12. **Changes to the Contract.** Changes to this Contract may only be approved by written amendment to this Contract. No alteration or variation of any term or condition of this agreement shall be valid unless made in writing, signed by the parties hereto in accordance with CITY Policies and Procedures. No oral understanding or agreement not incorporated as a duly authorized written amendment shall be binding on any of the parties hereto.

13. **Representations and Warranties.** CONTRACTOR by execution represents the skill, knowledge, proficiency and expertise to perform as herein stipulated and warrants that the credentials presented herein Attachment VI are authentic, current and duly granted.
14. **Contractor's Standard of Care.** CITY has relied upon the professional ability, experience, and credentials presented and represented by the CONTRACTOR as a material inducement to enter into this Contract. CONTRACTOR hereby warrants that all of CONTRACTOR's work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable Federal, State and local laws, it being understood that acceptance of CONTRACTOR's work by CITY shall not operate as a waiver or release. Where applicable, the CONTRACTOR shall maintain the appropriate certification(s), license(s) or accreditation(s) through the life of this contract, as submitted and stipulated herein Attachment VI and make them available for audit upon request by the CITY.
15. **Termination for Exceeding Maximum Level of Expenditures.** Contracts exceeding the monetary limits delegated to the Purchasing Agent, or authorized deputies, are not valid unless duly executed by the Chair of the Board of Supervisors. If this Contract was executed for the CITY of Gridley by the Purchasing Agent, or authorized deputy, this Contract shall automatically terminate on the date that the provision of services or personal property or incurring of expenses, the cumulative total of which, exceeds the amount prescribed by Government Code Section 25502.5 for personal services contracts or the amount prescribed by Public Contract Code Section 22032 (b) for public works contracts.
16. **Termination for Exceeding Maximum Term.** Contracts exceeding the five year term delegated to the Purchasing Agent, or authorized deputies, are not valid unless duly executed by the Chair of the Board of Supervisors. If this Contract was executed for the CITY of Gridley by the Purchasing Agent, or authorized deputy, this Contract shall automatically terminate on the date that the term exceeds five years. Amendments to this Contract, or new Contracts for essentially the same purpose, shall not be valid beyond the five year limitation unless duly executed by the Chair of the Board of Supervisors.
17. **Compliance with Laws.** CONTRACTOR shall comply with all Federal, State and local laws, rules and regulations including, without limitation, and not limited to any nondiscrimination laws. Specifically, the CONTRACTOR by executing this agreement stipulates and certifies that as an individual or as an entity, complies in good faith as well as all actions the following regulatory requirements at least but not limited to:
- a. Non-discrimination with regard to minority, women, and disabled veteran-owned business enterprises; hiring practices on the basis of race, color or national origin, gender, handicaps or age.
  - b. Environmental protection legislation and in particular regarding clean air and water, endangered species, handling or toxic substances and the public right to know.
  - c. Drug Free workplace, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act and Public Health Service Act
  - d. National Labor Relations Board Public Contract Code 10296.
  - e. Domestic Partners – Public Contract Code 10295.3.
  - f. ADA 1990 42 USC 12101 et seq.
18. **Applicable Law and Forum.** This Contract shall be construed and interpreted according to California law and any action to enforce the terms of this Contract for the breach thereof shall be brought and tried in the Superior Court of the City of Gridley.
19. **Contractor Performance and the Breach Thereof.** The CITY may terminate this agreement and is relieved of the payment of any consideration to CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. CONTRACTOR shall be notified in a timely manner of default and provided 30 days in which to remedy the default. If at the end of the 30 days, if remedy is not made or does not satisfy the default, the CITY shall notify the CONTRACTOR of the breach and thereby the termination of this

contract. In the event of such termination, the CITY may proceed with the work in any manner deemed proper by the CITY. The cost to the CITY shall be deducted from any sum due the CONTRACTOR under this agreement and the balance, if any, shall be retained by the CITY.

20. **Contradictions in Terms and Conditions.** In the event of any contradictions in the terms and/or conditions of this Contract, these Attachment I TERMS AND CONDITIONS shall prevail.
21. **No Delegation Or Assignment.** Provider shall not delegate, transfer or assign its duties or rights under this Agreement, either in whole or in part, directly or indirectly, by acquisition, asset sale, merger, change of control, operation of law or otherwise, without the prior written consent of CITY and any prohibited delegation or assignment shall render the contract in breach. Upon consent to any delegation, transfer or assignment, the parties will enter into an amendment to reflect the transfer and successor to CONTRACTOR. CITY will not be obligated to make payment under the Agreement until such time that the amendment is entered into.
22. **Conflict of Interest.** CONTRACTOR and CONTRACTOR'S employees shall have no interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this contract.
  - a. This contract is entered into by CITY upon the express representation that CONTRACTOR has no other contracts in effect with CITY except as described on Exhibit "A" hereto attached. Exhibit "A" is hereby made part of this contract by its reference herewith and hereby subjugated to these General Terms and Conditions (Attachment I).
  - b. CONTRACTOR understands and will adhere to the CITY's policy that no contracts shall knowingly be issued to any current CITY employee or his/her immediate family or to any former CITY employee or his/her immediate family until two years after separation from employment, without notifying the Finance Director in writing:

Finance Director  
685 Kentucky Street  
Gridley, CA 95948
  - c. CONTRACTOR stipulates by execution of this contract that they have no business or other interest that provides any conflict with the interest of the City of Gridley in the matters of this agreement. CONTRACTOR recognizes that it is a breach of ethics to not disclose any interest that may be a conflict to the CITY for the advice of City Counsel on the matter prior to executing this contract.
23. **Canon of Ethics.** CONTRACTOR by execution of this contract agrees to act in the best interest of and on behalf of the City of Gridley and its constituents in all matters, honest, fair, prudent and diligent as dictated by reasonable standards of conduct for their profession.
24. **Severability.** The terms and conditions of this contract shall remain in force and effect as a whole separate from and even if any part hereof of the agreement is deemed to be invalidated.
25. **No Implied Waiver.** In the event that The CITY at any point ignores or allows the CONTRACTOR to break an obligation under the agreement, it does not mean that CITY waives its future rights to require the CONTRACTOR to fulfill those obligations.
26. **Entirety of Agreement.** This contract inclusive of all Attachments herein is stipulated and made part of the contract constitutes the entire agreement between these parties.

**EXHIBIT "A"**

**Acknowledgement of OTHER COUNTY Contracts**

List any and all contracts that you have with CITY agencies. If none, you must stipulate "none." This cannot be left blank or omitted from the contract.

**ATTACHMENT II**  
**INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES**

**\*Please provide a copy of Attachment II to your insurance agent.**

**Contractor shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property that may arise from or be in connection with the performance of the work hereunder by Contractor, Contractor's agents, representatives, employees and subcontractors. Before the commencement of work Contractor shall submit Certificates of Insurance and Endorsements evidencing that Contractor has obtained the following forms of coverage:**

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE - Coverage shall be at least as broad as:**

- 1) Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability:** ISO's Commercial Automobile Liability coverage form CA 00 01.
  1. Commercial Automobile Liability: Covering any auto (Code 1) for corporate/business owned vehicles, or if Contractor has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
  2. Personal Lines automobile insurance shall apply if vehicles are individually owned, with limits no less than \$100,000 per person, \$300,000 each accident, \$50,000 property damage.
- 3) Workers' Compensation Insurance:** As required by the State of California with Statutory Limits and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury and disease. *(Not required if Contractor provides written verification he or she has no employees.)*
- 4) Professional Liability (Errors and Omissions):** Insurance appropriate to Contractor's profession, with limits no less than **\$1,000,000** per occurrence or claim, **\$1,000,000** aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**B. OTHER INSURANCE PROVISIONS - The insurance policies are to contain, or be endorsed to contain, the following provisions:**

- 1)** The City of Gridley, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL and Commercial Auto policies with respect to liability arising out of work or operations performed by or at the direction of the Contractor, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions used).
- 2)** For any claims related to this contract, Contractors insurance coverage shall be primary insurance coverage at least as broad as ISO Form CG 20 01 04 13 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Contractors insurance and shall not contribute with it.

- 3) Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.

**C. WAIVER OF SUBROGATION:** Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor 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.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

**D. SELF-INSURED RETENTIONS:** Self-insured retentions must be declared to and approved by the City. The City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**E. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

**F. VERIFICATION OF COVERAGE:** Contractor shall furnish City with original certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**G. SPECIAL RISKS OR CIRCUMSTANCES:** City reserves the right to modify these requirements including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**H. SUBCONTRACTORS:** Contractor shall include all subcontractors as insured under its policies or require all subcontractors to be insured under their own policies. If subcontractors are insured under their own policies, they shall be subject to all the requirements stated herein, including providing the City certificates of insurance and endorsements before beginning work under this contract.

**I. CLAIMS MADE POLICIES:** If any of the required policies provide coverage on a claims-made basis:

- 1) The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 4) A copy of the claims reporting requirements must be submitted to the City for review.

**ATTACHMENT VI  
PROFESSIONAL CREDENTIALS**

The CONTRACTOR herein presents the required and essential credentials for performance of this contract and warrants them to be authentic, current and duly granted.

List required and essential credentials which will be available in the contract file and may or may not be hereto attached and which may be but are not limited to:

Professional Degrees  
Licenses  
Certifications  
Bonds

### **ATTACHMENT III Scope of Work**

Unless indicated otherwise herein, the CONTRACTOR shall furnish all labor, materials, transportation, supervision and management and pay all taxes required to complete the project described below:

At *(fill in the appropriate point)* prior to the end of the contract term an assessment may be made of the value of the professional services herein delineated and thus far received. At the conclusion of the assessment, it may be determined that the CONTRACTOR owes certain fulfillment and/or deliverables for which the remaining payments may be withheld up to 20% of the contract. The assessment may determine that there is additional work to be amended to this scope of work. In the event of an amendment, the CONTRACTOR shall be notified and the amendment submitted and duly authorized in accordance with CITY Policy and Procedure. Otherwise, pertaining to this contract's scope of work it is the CONTRACTOR's responsibility to remain within the term and amount of the contract. If the terms and/or conditions of this contract including the amounts, rates, time and/or duration are exceeded in any way without fully executed amendment, the CONTRACTOR may not be reimbursed.

*NOTE: If detail rate schedules or other documents are appropriate to the Scope of Work and separate from this Attachment III they must be stipulated in this Attachment by specific reference and thereby made part of this contract, labeled accordingly (Attachment III, Exhibit A, (or whatever the appropriate specific reference), etc.). They must also be included in the pagination of this contract. Consequently, it is necessary to scan them into the body of the contract where pagination control can make them inclusive.*

#### **Duties and obligations of the CONTRACTOR:**

Since this is a professional service contract, this is the appropriate point in the contract to stipulate any subjective expectation that may be implied by their profession but once explicated become performance elements of the contract.

State all specific elements of the contract for which specific payment due as objectively as possible. Whether contract is based on hourly, daily, weekly, monthly rates; flat rate for deliverables; project milestone incremental payments; charges for use of particular (i.e., therapeutic) equipment or implements; any reports, criteria and schedule

If expenses are allowed, specify what is reasonable and/or reimbursable AND always state that expenses (unless per diem) must be preapproved and accompanied by receipts. There should be a cap to the expenses.

If "materials" are required, specify what they will (or might be) and some approximation not to exceed amount. Unless the materials are provisions of the "house" of the contractor, they will require receipts to be presented with invoice stipulating their charge.

State any circumstances under which no payment will be made.

State if payments are contingent on specific delineation on the invoice(s) such as coding or regulatory designated description.

Recommend that rates be laid out in table format if possible for clarity and ease of processing payments.

State specifically that payments stipulated are the Contractor's only compensation.

#### **Duties and obligations of the CITY:**

CITY's obligations may be:

- Make any relevant notification promptly
- Provide data promptly
- Provide schedules or set up meetings or respond to presentation of information promptly
- Pay upon provision as herein stipulated and after presentation of appropriate receipts and/or invoice.
- If possible avoid stipulating payment within specific period. If absolutely necessary state no less than 30 days and 60 days is not atypical.
- City does not pay interest or penalties.



## **EXPENSE CONTRACTS**

### **Regulatory Compliance Requirements**

All City Contracting shall comply with 2 CFR, Part 200 and legislation for the regulation of labor, safety and environmental protection, emergency preparedness and advisories, and any other codified criteria including but not limited to the following as relevant to this Contract:

#### **1. Remedies:**

##### Contractor Performance and the Breach Thereof

The City may terminate this Contract and is relieved of the payment of any consideration to the Contractor should the Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. The Contractor shall be notified in a timely manner of default and provided 30 days in which to remedy the default. If at the end of the 30 days, if remedy is not made or does not satisfy the default, the City shall notify the Contractor of the breach and thereby the termination of this Contract. In the event of such termination, the City may proceed with the work in any manner deemed proper by the City. The cost to the City shall be deducted from any sum due the Contractor under this agreement and the balance, if any, shall be retained by the City.

##### Termination for Cause and Convenience

In the event the Contractor fails to perform in accordance with the terms of this Contract within the time specified, if any, or a reasonable time after placement of this order, the City Purchasing Agent may by written notice, cancel this Contract and may hold the Contractor liable for any damage caused the City by reason of failure to perform in accordance with these conditions.

It is agreed by the parties to this Contract that in case all the work called for under the Contract in all parts and requirements is not finished or completed within the time period as set forth in this Contract, damage will be sustained by the City of Gridley, and that it is and will be difficult or impossible to ascertain and determine that actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor shall pay to the City the sum of one hundred dollars (\$100) per calendar day for each and every working days' delay in finishing the work in excess of the time period prescribed; and the Contractor agrees to pay said liquidated damages as herein provided, and in case the same is not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under this Contract or any other Contract between the City and the Contractor.

#### **2. Equal Employment Opportunity. As provided under 41 CFR § 60-1.4(b)**

##### Key Definitions

Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government

for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action will 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; 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 setting forth the provisions of this nondiscrimination clause.
- (2) 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 considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (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 advising the said labor union or workers' representatives of the Contractor's commitments under this section, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and

accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 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 the administering agency may direct 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 by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part the grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from

such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

### **3. Davis-Bacon Act**

The Contractor and the City will comply with the Davis-Bacon Act as amended (40 U.S.C. 3141–3148). In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor shall pay wages not less than once a week.

### **4. Copeland “Anti-Kickback” Act**

The Copeland “Anti-Kickback” Act (40 U.S.C. 3145) provides that the City and the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City must report all suspected or reported violations to the Federal awarding agency.

- (1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
- (2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.

### **5. Compliance with the Contract Work Hours and Safety Standards Act 40 U.S.C. 3701–3708**

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Safety requirements. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (5) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (5) of this section.

## **6. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the City or the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the City or the Contractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- (1) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

## **7. Clean Air Act and the Federal Water Pollution Control Act**

The Contractor and the City agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the Cal OES, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the Cal OES, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

### **8. Energy Efficiency**

- (1) Contractor will comply with all standards and policies relating to energy efficacy which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

### **9. Suspension and Debarment**

The City does not employ vendors or contractors who are listed on the National World Wide Web Site System for Award Management (sam.gov) by Federal General Services Administration (GSA) for the purpose of disseminating information on parties that are debarred from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and each agency's codification of the Common Rule for Non-procurement suspension and debarment.

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- (3) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

#### **10. Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

#### **APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000) the Contractor will use the following certification:

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and

agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

## **11. Procurement of Recovered Materials**

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program> . The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products> ."

## **12. Additional FEMA Requirements**

### Changes

Changes to this Contract may only be approved by written amendment to this Contract. No alteration or variation of any term or condition of this agreement shall be valid unless made in writing, signed by the parties hereto in accordance with CITY Policies and Procedures. No oral understanding or agreement not incorporated as a duly authorized written amendment shall be binding on any of the parties hereto.

### Access to Records

The following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide Cal OES, the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.



- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the Contract.

### **13. Department of Homeland Security (DHS) Seal, Logo and Flags**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

### **14. Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that FEMA financial assistance will be used to fund the Contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

### **15. No Obligation by Federal Government.**

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.

### **16. Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

By execution of this CONTRACT including this Attachment V the Contractor certifies that compliance with all the stated regulatory requirements as stipulated and where action is appropriate and required as a means of compliance, shall endeavor in good faith to conform to regulations and in no way are they connected to any federal, state or local debarment proceedings.