

# CITY OF GROVER BEACH

County of San Luis Obispo  
State of California



## REQUEST FOR PROPOSAL

for

## FEASIBILITY STUDY FOR A SENIOR CENTER FACILITY

August 5, 2019

Proposals Due by: Monday, September 16, 2019 @ 5:00 p.m.

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**City of Grover Beach  
Community Development Block Grant Program  
Request for Proposals to Prepare a  
Senior Center Feasibility Study**

**Introduction**

The City of Grover Beach is seeking proposals from experienced Consultants to conduct a comprehensive feasibility analysis for developing a future senior center facility within the City of Grover Beach. The purpose of the study is to determine the programs and services that would be provided at a senior center, identify potential locations, prepare conceptual plans and cost estimates for development and operations, and explore funding options. The Feasibility Study will provide the City Council with information on potential locations and preliminary costs, which will allow the City to allocate future City funding and/or apply for CDBG funds to construct a senior center.

This study will be funded by the Community Development Block Grant (CDBG) Program funded by U.S. Department of Housing and Urban Development (HUD) and administered by the State of California Housing and Community Development (HCD) Department. The following defines the proposed project, scope of services, proposals requirements, selection process, and other information required to prepare and submit a proposal.

**Background**

The City of Grover Beach was incorporated in 1959 and is a full-service city operating under a Council-Manager form of government. Located along the Pacific Ocean in south San Luis Obispo County, Grover Beach is home to approximately 14,000 residents in an area of approximately 2.2 square miles. Along with Grover Beach, Oceano, Pismo Beach, and Shell Beach, Arroyo Grande is one of the “Five Cities” of California’s Central Coast.

**Procurement Process**

The City intends to enter into an agreement with a consultant to provide professional services as described in this RFP. The City will award a contract to the proposer with the highest rating after the final agreement has been successfully negotiated. If no final agreement is reached between the City and the proposer with the highest rating, the City reserves the right to negotiate a contract with the proposer with the second highest rating.

**Contact Information**

Except as authorized by the City representative or as otherwise stated in the RFP, communication during the selection process shall be directed to the specified City representative. In order to maintain fair and equitable treatment of everyone, proposers shall not unduly contact or offer gifts or gratuities to any official or employee of the City in an effort to influence the selection process or in a manner that gives the appearance of influencing the selection process. This prohibition applies before the RFP is issued, through selection, as the project is developed, and extends through the award of a contract. Failure to comply with this requirement may result in a disqualification in the selection process. All communications regarding this project shall be directed to:

Janet Reese, Associate Planner  
City of Grover Beach  
154 South Eighth Street  
Grover Beach, CA 93433  
(805) 473-4524  
[jreese@groverbeach.org](mailto:jreese@groverbeach.org)

Proposers may submit questions or formal requests for clarification on the RFP in writing until the submittal date via email at the contact address noted above.

### **Request for Proposals**

The Request for Proposal (RFP) documents, including the submittal requirements and the selection criteria and schedule, will be available in electronic format on the City's website at <http://www.groverbeach.org>. The City reserves the right to reject any or all submittals or to waive any formality or technicality in any submittal in the interest of the organization. The response to the "Request for Proposals" must be made according to the requirements set forth in this RFP. Failure to adhere to these requirements or to include conditions, limitations or misrepresentations may be cause for rejection of the submittal.

The response shall include, but is not limited to the following:

- A. A brief history and detailed summary of your firm's qualifications and specific experience;
- B. A statement of your firm's policy regarding affirmative action, and indication if your firm is a small business and/or minority or woman owned business.
- C. Experience of firm and individual team members;
- D. List of similar work performed by the firm, including location and type of project(s). The City may contact past clients for references. Provide the name and telephone number of a reference for each project listed;
- E. A description of the proposed scope of work and methodology, which may include alternatives to the City's basic work scope.
- F. A proposed schedule with milestones;
- G. A description of proposed costs including:
  1. Provide the hourly rate for each project team member who would be assigned to this project and the estimated number of hours required for each task.
  2. Other expenses that are requested to be reimbursed.
  3. Consultant shall identify any personnel and overhead costs associated with periods of project inactivity or delay.
- H. Organizational chart applicable to this project identifying the project manager, key personnel, and supporting staff. Specific responsibilities of each person should be detailed;
- I. Acknowledgement that the standard contract for the City of Grover Beach (see Attachment 1 for the sample) is acceptable as presented or as amended (include the proposed amendments).

### **Scope of Work**

In addition to the specific tasks listed below, Consultant will be required to:

- Attend a project Kick-Off Meeting at the City;
- Frequently communicate with City staff via telephone and email to provide updates on the project status;
- Attend up to three additional meetings with City staff.

At a minimum, the Scope of Work to be performed by the consultant shall include the following:

**Task 1 – Existing Conditions Report**

1. Prepare an Existing Conditions Report identifying all existing facilities and services provided in the Five Cities area (include public, private and non-profit organizations), demographics of current participants and anticipated future participants, current participant fees, and provide a comprehensive summary of the results that includes an analysis of space needs and programming needs/gaps that exist. This information may be gathered through websites and other sources but must include direct contact with service providers to verify the accuracy of the information.

**Deliverables for Task 1:**

- a. Existing Conditions Report with all sources and contact information.

**Task 2 – Community Input Process**

1. Conduct a public input process that will consist of the following:
  - a. Two Focus Group meetings (Focus Groups to be determined by staff and consultant at the “Kick-Off” Meeting);
  - b. Stakeholder and Organization interviews (Stakeholders and organizations to be determined by staff and consultants following the Kick-Off Meeting);
  - c. Conduct a Public Workshop or Open House designed to solicit public input on the type of senior center, amenities desired, the types of activities, and possible locations. The date and time shall be determined by staff that would achieve the highest public participation; and
  - d. Design and provide an on-line community survey to solicit online public input on the type of senior center, amenities desired, the types of activities, and possible locations for a senior center.
  - e. Other public input efforts as proposed by consultant.
2. Prepare a report summarizing the community input process and input received.

**Deliverables for Task 2:**

- a. Report summarizing the community input process and findings.

**Task 3 – Draft Senior Center Site Feasibility Report**

1. Based on the community input process, identify up to nine potential sites for the Senior Center which may include both developed and undeveloped sites. Staff will provide a list of City-owned properties and assist in determining potential site constraints. A site matrix shall be prepared that identifies program recommendations, required space needs, and other site development criteria. The spreadsheet matrix shall provide a weighted analysis of each identified site for developing a senior center that would meet the defined needs of the community based on the findings of the Existing Conditions Report and Community Input Process.

**Deliverables for Task 3:**

- a. Draft Senior Center Site Feasibility Report with site matrix weighted analysis

**Task 4 - City Council Presentation**

- 1. Prepare and present to the City Council the results of the Existing Conditions Report, Community Input Process and Draft Senior Center Site Feasibility Report with a recommendation on the three preferred sites.

**Deliverables for Task 4:**

- a. Staff Report and PowerPoint Presentation
- b. Site Matrix Weighted Analysis

**Task 5 - Development of Conceptual Site Plan and Floor Plan for Three Sites**

- 1. Based on direction from the Council on the three preferred sites, the consultant shall prepare the following for each site:
  - a. Prepare a conceptual site plan including parking and circulation requirements that would meet the space and program needs identified in the Existing Conditions Report and Community Input Process;
  - b. Prepare a conceptual floor plan that would meet the space needed to implement the recommended programs.;
  - c. Prepare a cost estimate for site development, building and/or tenant improvement, furniture, fixtures and equipment for the building, and estimated time to construct the project (could include phasing the improvements, depending on available funding); and
  - d. Prepare an annual cost estimate for maintenance and operations.
    - a. Identify potential funding sources for capital development and operations costs, including potential revenue sources.

**Deliverables for Task 5:**

- a. Conceptual site plans and floor plans
- b. Cost estimates for development and schedule
- c. Operational/maintenance cost estimates
- d. Potential funding sources

**Task 6 - Final Presentation**

- 1. Prepare a final draft report with the conclusion of the three preferred sites and make a presentation to the City Council.
- 2. Based on Council input, make recommended revisions and submit a final report to staff.

## Deliverables for Task 6:

- a. Draft Final Report
- b. Staff Report and PowerPoint Presentation
- c. Final Report

## Preliminary Project Schedule

The following is the anticipated schedule for the project. The schedule is preliminary and should be further refined and modified by the proposer in accordance with the Proposer's management plan.

- |  |                           |
|--|---------------------------|
| • Issue RFP  | August 2, 2019            |
| • <b>Proposals due to the City by 5:00 p.m.</b>      | <b>September 16, 2019</b> |
| • Consultant selected and contract awarded           | November 2019             |
| • Project Kick-off                                   | November 2019             |
| • Existing Conditions Report                         | January 2020              |
| • Community Input Process                            | February 2020             |
| • Draft Senior Center Site Feasibility Report        | March 2020                |
| • City Council Meeting Site Feasibility Presentation | April 2020                |
| • Development of Conceptual Site Plan and Floor Plan | June 2020                 |
| • City Council Meeting Final Presentation            | July 2020                 |

## Submittal of Proposals

Three copies of the Proposals shall be submitted by **Monday September 16, 2019 at 5:00 p.m.** either in person or by mail to the following address:

City of Grover Beach  
Community Development Department  
Attn: Janet Reese  
154 South 8<sup>th</sup> Street  
Grover Beach, CA 93433

Late or incomplete proposals will not be considered. The City shall have the sole discretion in determining the completeness of each proposal. This solicitation of proposals is not construed as a contract of any kind. The City is not responsible for any pre-contractual expenses incurred by firms responding to this RFP. All proposals shall become the property of the City and will not be returned. All proposals received may become public records under the laws of the State of California and the public may be given access to them after the formal selection process has been completed.

It is understood and agreed that the Proposer claims no proprietary rights to the ideas and written materials contained in or attached to its proposal. Proposals will be maintained as confidential until recommendation is submitted to the City Council at which time all proposals will be public record. Proposers warrant and covenant that no official or employee of the City, or any business entity in which an official of the City has an interest, has been employed or retained to solicit or aid in the procuring of the contract of this project.

The successful proposer will have the status of an independent contractor and will not be either an officer or an employee of the City.

Consultant shall not employ discriminatory practices in the treatment of persons in relation to the circumstances provided for herein, including assignment of accommodations, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin,

ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

**Method and Criteria for Selection**

The initial review of all proposals will be to evaluate to ensure they meet the following minimum requirements:

- A. The proposal is complete and is in compliance with the RFP.
- B. Prospective firm agrees to meet, **by inclusion of such statement in submittal letter**, all State and Federal requirements included in this RFP.

Failure to meet these requirements may result in the proposal being rejected. No proposal shall be rejected if it contains minor irregularities, defect, or variation of the irregularity; defect or variation is considered by the City to be immaterial or inconsequential. In such case, the Proposer will be notified of the deficiency in the proposal and given the opportunity to correct. The City may elect to waive the deficiency and accept the proposal as submitted.

The City reserves the right to reject any and all proposals submitted, to request clarification of information submitted, to request additional information from any and/or all applicants, and to waive any irregularity in the proposal and review as long as City procedures remain consistent with the State Department of Housing and Community Development procurement requirements.

The contract will be awarded to the proposer who submits the most favorable overall proposal, as determined by the City in its sole discretion, and may be awarded to other than the lowest proposer. Proposals will be evaluated based on the following criteria:

<b>Evaluation Score Methodology:</b>	<b>Points Available</b>
• Background, experience and qualifications of the firm as it relates to similar studies	35
• Background, experience and qualifications of the individuals identified in the consultant’s project team	35
• Thoroughness of the Scope of Work, milestones, schedule, cost analysis, and approach to completing tasks	25
• Estimated value to provide services	5
<i>Total</i>	<hr/> 100

The City may elect to interview the most qualified firms as evidenced by the submitted proposals to negotiate final costs/anticipated effort for each milestone/task. Selected consultants will be required to submit a final cost proposal for City review and determination of award.

The terms and scope of the contract will be determined based on negotiations between the City and the prospective consultant. If the City and the prospective consultant fail to reach a contractual agreement, the City may negotiate with any other top-selected consultant.

After selection of the consultant, all applicants will be notified of the City’s decision.

**Disputes Relating to Proposal Process**

In the event a dispute arises concerning the proposal process prior to the award of the contract, the party wishing resolution of the dispute shall submit a request in writing to the City Manager within ten calendar days of the date of the recommendation award or denial letter.

Grounds for an appeal is that the City failed to follow the selection procedures and adhere to requirements specified in this RFP or an addenda or amendments thereto; there has been a

violation of conflict of interest as provided by California Government Code section 87100 et seq; or violation of Federal or State law. The City will consider only those specific issues addressed in the written appeal.

The City Manager shall consider any matter appealed during a scheduled hearing, within thirty days of receipt. The decision of the City Manager shall be final with respect to the matters of fact.

All disputes and/or appeals must be submitted to:

City Manager  
City of Grover Beach  
154 South 8<sup>th</sup> Street  
Grover Beach, CA 93433

### **Contract Termination/Debarment**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

The RFP/contract may be voided at any time for cause, by giving at least 14 days written notice, due to violations of any terms and/or special conditions of the RFP/contract, upon request of HUD/City, or withdrawal of the expenditure authority.

It is a mutually understood between the parties that this RFP may have been written before ascertaining the availability of appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if the RFP were executed after the determination was made.

The RFP is valid and enforceable only if sufficient current funds are made available to the Department by the United States Government for the Federal fiscal year. In addition, this RFP is subject to any additional restrictions, limitations, conditions or statute enacted by the Congress or State Legislature, which may affect the provisions, terms or funding of this RFP.

### **Assignment**

Any contract resulting from this bid and any amendments or supplements thereto shall not be assignable by the successful bidder either voluntarily or by operation of law, without the written approval of the City and shall not become an asset in any bankruptcy, receivership, or guardianship proceedings. Any assignee would need to have equivalent qualifications as to retain award eligibility.

### **Insurance Requirements**

See Attachment 1, Agreement for Professional Consultant Services.

### **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, those included in Attachment 2.

**Attachment 1: Agreement for Professional Consultant Services**

## **Attachment 2: Federal Terms and Conditions**

**AGREEMENT  
CITY OF GROVER BEACH, CALIFORNIA  
PROFESSIONAL CONSULTANT SERVICES  
SENIOR CENTER FEASIBILITY STUDY**

THIS AGREEMENT is made and entered into effective the [DAY] day of [MONTH], 20[YR], by and between the CITY OF GROVER BEACH, a California municipal corporation (hereinafter referred to as "CITY"), and [NAME/COMPANY] (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional services for the [NAME/DESCRIPTION OF PROJECT], more specifically identified in the Proposal, Scope of Work and Fee Schedule, jointly attached as "Exhibit A" to this Agreement, herein referred to as the PROJECT; and

WHEREAS, CONSULTANT is engaged in the business of [TYPE OF BUSINESS] and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, this Agreement sets forth the terms and conditions under which CONSULTANT shall provide professional services, to be paid by the City of Grover Beach; and

WHEREAS, this Agreement will be administered for CITY by the Director of [DEPARTMENT], hereinafter referred to as DIRECTOR or his/her designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

**ARTICLE I. SCOPE OF SERVICES**

CONSULTANT shall complete said PROJECT described herein and more fully described in Exhibit A, and in accordance with local, State and Federal laws. This shall include all work incidental to, or necessary to perform, such services even though not specifically described in Exhibit A.

**ARTICLE II. COMPENSATION AND PAYMENT**

- A. CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be performed on a not to exceed basis of \$[xx,xxx].
- B. CONSULTANT shall invoice CITY on a monthly basis, via detailed statement, which will be processed and payable in the normal course of CITY business, typically within 30 days of receipt of an invoice unless otherwise identified in this Agreement.
- C. The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by

written Contract Amendment to the Agreement signed by an authorized representative for each party. **CONSULTANT** shall not be entitled to any additional compensation if services are performed prior to a signed written Contract Amendment.

- D. At any time prior to issuance of final payment, the **CITY** may conduct a cost audit of **CONSULTANT'S** invoices/statements. Any payment may be reduced by amounts found by **CITY** not to constitute allowable costs and/or adjusted for prior overpayments or underpayments. Upon **CONSULTANT'S** compliance with all terms of this Agreement, City shall promptly pay any balance of allowable costs.

### **ARTICLE III. TERMINATION, REMEDIES, FORCE MAJEURE AND CONSOLIDATION OF DISPUTES**

- A. This Agreement shall terminate without any liability of **CITY** to **CONSULTANT** upon the earlier of:
- (i) **CONSULTANT'S** filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against **CONSULTANT**;
  - (ii) Seven (7) calendar days written notice, with or without cause, by either the **CITY** or **CONSULTANT**;
  - (iii) Expiration of this Agreement.
- B. Upon any termination or expiration of this Agreement, **CONSULTANT** shall
- (i) Immediately stop all work hereunder;
  - (ii) Immediately cause any and all of its subcontractors to cease work; and
  - (iii) Return to **CITY** any and all unearned payments and all properties and materials in the possession of **CONSULTANT** that are owned by **CITY**. Subject to the terms of this Agreement, **CONSULTANT** shall be paid compensation for services satisfactorily performed prior to the effective date of termination. **CONSULTANT** shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.
- C. In the event of termination due to failure of **CONSULTANT** to satisfactorily perform in accordance with the terms of this Agreement, **CITY** may withhold an amount that would otherwise be payable as an offset to, but not in excess of, **CITY'S** damages caused by such failure. In no event shall any payment by **CITY** pursuant to this Agreement constitute a waiver by **CITY** of any breach of this Agreement which may then exist on the part of **CONSULTANT**, nor shall such payment impair or prejudice any remedy available to **CITY** with respect to the breach.
- D. Upon any breach of this Agreement by **CONSULTANT**, **CITY** may:
- (i) Exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law;
  - (ii) Proceed by appropriate court action to enforce the terms of the Agreement; and/or
  - (iii) Recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that **CITY** improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.
- E. **CONSULTANT** shall provide **CITY** with adequate written assurances of future performance, upon the request of the Director or his/her designee, in the event **CONSULTANT** fails to comply with any terms or conditions of this Agreement.
- F. **CONSULTANT** shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of **CONSULTANT** and without its fault or negligence such as, acts of God or

the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. **CONSULTANT** shall notify the Director or his/her designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or his/her designee of the cessation of such occurrence.

- G. **CONSULTANT** agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at **CITY'S** option, be joined and consolidated with any other dispute or disputes arising from or relating to the **PROJECT** so that all disputes arising from or relating to the **PROJECT** may be resolved in a single proceeding. **CONSULTANT** hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

#### **ARTICLE IV. CONFIDENTIAL INFORMATION, OWNERSHIP OF DOCUMENTS AND COPYRIGHT LICENSE**

- A. Any reports, information, or other data prepared or assembled by **CONSULTANT** pursuant to this Agreement shall not be made available to any individual or organization by **CONSULTANT** without the prior written approval of **CITY**. During the term of this Agreement, and thereafter, **CONSULTANT** shall not, without the prior written consent of **CITY**, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of **CITY**, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information developed pursuant to this Agreement, disclosed or submitted, orally, in writing, or by any other medium or media, (otherwise referred to as "work"). All Confidential Information shall be and remain confidential and proprietary in **CITY**.
- B. **CONSULTANT** shall not reproduce (such as photographs and prints), duplicate, distribute reproductions, or incorporate into any trademark or service mark, the work without the prior written consent of **CITY**. Any rights of the **CONSULTANT** in the work terminate upon the death of such **CONSULTANT** and do not extend to such **CONSULTANT'S** heirs, successors or assigns.
- C. Title to the work shall pass to **CITY** upon final acceptance by **CITY**. **CITY** reserves the right to donate, transfer or sell the work or any portion thereof. **CITY** shall have the exclusive right to publicly display the work and shall have a license to reproduce (such as photographs and prints) or create three-dimensional reproductions of the work for any noncommercial purpose (including, but not limited to, books, slides, postcards, film, Internet sites, reproductions for advertising, and other media). Prior to public display, the **CITY** shall consider the sensitive nature and potential security risk of releasing the information to the general public. Such reproductions shall contain if legally necessary a copyright notice. Reproductions for commercial purposes are only to be made with the mutual written consent of **CONSULTANT** and **CITY**. All references and reproductions or adaptations of the work will credit the work to the **CONSULTANT** unless **CONSULTANT** requests to the contrary. **CITY** reserves the right to modify, remove and/or relocate the work at any time, and after consultation with **CONSULTANT**, shall have the right to determine when and if modifications, repairs and/or restorations are needed. If City makes modifications, repairs or restoration not approved by the **CONSULTANT**, the **CONSULTANT** shall

have the right to sever its association with the work. **CONSULTANT** agrees to give **CITY** written notice prior to asserting any claim pertaining to the work, and **CITY** shall have not less than 90 days from the date of receipt of claim to cure any such claim. **CITY** may incorporate the work into any trademark or service mark to be utilized by City to register the same in accordance with Federal, state or local law.

- D. If **CONSULTANT** should subcontract all or any portion of the services to be performed under this Agreement, **CONSULTANT** shall cause each subcontractor to also comply with the requirements of this Article (IV).

This Article (IV) shall survive expiration or termination of this Agreement.

#### **ARTICLE V. PROFESSIONAL SKILL**

It is further mutually understood and agreed by and between the parties hereto that inasmuch as **CONSULTANT** represents to **CITY** that **CONSULTANT** and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, **CITY** relies upon the skill of **CONSULTANT** and any subcontractors to do and perform such services in a skillful manner and **CONSULTANT** agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by **CITY** shall not operate as a release of **CONSULTANT** or any subcontractors from said professional standards.

#### **ARTICLE VI. INDEMNIFICATION AND DEFENSE**

- A. CONTRACTOR shall indemnify, defend with legal counsel approved by AGENCY, and hold harmless AGENCY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's negligence, recklessness or willful misconduct in the performance of work hereunder 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 or active negligence or willful misconduct of the AGENCY. Should conflict of interest principles preclude a single legal counsel from representing both AGENCY and CONTRACTOR, or should AGENCY otherwise find CONTRACTOR's legal counsel unacceptable, then CONTRACTOR shall reimburse the AGENCY its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The CONTRACTOR shall promptly pay any final judgment rendered against the AGENCY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONTRACTOR's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.
  
- B. CONTRACTOR obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of AGENCY under any provision of this agreement, CONTRACTOR shall not be required to indemnify and hold harmless AGENCY for liability attributable to the active negligence of AGENCY, provided such active negligence is determined by agreement between the parties or by the

findings of a court of competent jurisdiction. In instances where AGENCY is shown to have been actively negligent and where AGENCY'S active negligence accounts for only a percentage of the liability involved, the obligation of CONTRACTOR will be for that entire portion or percentage of liability not attributable to the active negligence of AGENCY.

- C. If **CONSULTANT** should subcontract all or any portion of the services to be performed under this Agreement, **CONSULTANT** shall require each subcontractor to indemnify, hold harmless and defend **CITY** and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This Article (VI) shall survive termination or expiration of this Agreement.

#### **ARTICLE VII. INSURANCE**

- A. Throughout the life of this Agreement or to up to December 31, 2024, whichever comes first, **CONSULTANT** shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either:
  - (i) Admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide; or
  - (ii) As may be authorized in writing by **CITY'S** Administrative Services Director, or his/her successor, or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in **Exhibit B** shall maintain limits of liability of not less than those amounts stated therein.
- B. If at any time during the life of the Agreement or any extension, **CONSULTANT** or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to **CONSULTANT** shall be withheld until notice is received by **CITY** that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to **CITY**. Any failure to maintain the required insurance shall be sufficient cause for **CITY** to terminate this Agreement. No action taken by **CITY** pursuant to this Article (VII) shall in any way relieve **CONSULTANT** of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by **CITY** that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- C. The fact that insurance is obtained by **CONSULTANT** shall not be deemed to release or diminish the liability of **CONSULTANT**, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify **CITY** shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by **CONSULTANT**. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of **CONSULTANT**, its principals, officers, agents, employees, persons under the supervision of **CONSULTANT**, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

- D. If **CONSULTANT** should subcontract all or any portion of the services to be performed under this Agreement, **CONSULTANT** shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the **CITY** and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with **CONSULTANT** and **CITY** prior to the commencement of any services by the subcontractor. **CONSULTANT** and any subcontractor/sub-consultant shall establish additional insured status for **CITY**, its officers, officials, employees, agents and volunteers.

#### **ARTICLE VIII. CONFLICT OF INTEREST AND NON-SOLICITATION**

- A. Prior to **CITY'S** execution of this Agreement, **CONSULTANT** shall complete a City of Grover Beach Conflict of Interest Disclosure Statement in the form as set forth in **Exhibit C**. During the term of this Agreement, **CONSULTANT** shall have the obligation and duty to immediately notify **CITY** in writing of any change to the information provided by **CONSULTANT** in such statement.
- B. **CONSULTANT** shall comply, and require its subcontractors to comply, with all applicable
- (i) Professional canons and requirements governing avoidance of impermissible client conflicts; and
  - (ii) Federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.).

At any time, upon written request of **CITY**, **CONSULTANT** shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, **CONSULTANT** and the respective subcontractor(s) are in full compliance with all laws and regulations. **CONSULTANT** shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, **CONSULTANT** shall immediately notify **CITY** of these facts in writing.

- C. In performing the work or services to be provided hereunder, **CONSULTANT** shall not employ or retain the services of any person while such person either is employed by **CITY** or is a member of any **CITY** council, commission, board, committee, or similar **CITY** body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.
- D. **CONSULTANT** represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.
- E. Neither **CONSULTANT**, nor any of **CONSULTANT'S** subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. **CONSULTANT** and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

- F. If **CONSULTANT** should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, **CONSULTANT** shall include the provisions of this Article in each subcontract and require its subcontractors to comply therewith.

This Article (VIII) shall survive termination or expiration of this Agreement.

#### **ARTICLE IX. GENERAL TERMS**

- A. Except as otherwise provided by law, all notices expressly required of **CITY** within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.
- B. Records of **CONSULTANT'S** expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to **CITY** or its authorized representatives upon request during regular business hours throughout the life of this Agreement and till December 31, 2024 or, if longer, for any period required by law. In addition, all books, documents, papers, and records of **CONSULTANT** pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to **CITY** until such action is resolved, or until the end of said time period whichever shall later occur. If **CONSULTANT** should subcontract all or any portion of the services to be performed under this Agreement, **CONSULTANT** shall cause each subcontractor to also comply with the requirements of this paragraph. This Article IX(B) shall survive expiration or termination of this Agreement.
- C. Prior to execution of this Agreement by **CITY**, **CONSULTANT** shall have provided evidence to **CITY** that **CONSULTANT** is licensed to perform the services called for by this Agreement (or that no license is required). **CONSULTANT** and any subcontractors shall agree to obtain any local licensing or certifications necessary to perform services within the City, including but not limited to City Business Tax Certificates. If **CONSULTANT** should subcontract all or any portion of the work or services to be performed under this Agreement, **CONSULTANT** shall require each subcontractor to provide evidence to **CITY** that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

#### **ARTICLE X. NONDISCRIMINATION**

To the extent required by controlling federal, state and local law, **CONSULTANT** shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, **CONSULTANT** agrees as follows:

- A. **CONSULTANT** will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the

benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

- B. **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, gender identification, status as a disabled veteran or veteran of the Vietnam era. **CONSULTANT** shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, gender identification, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to **CONSULTANT'S** employment practices including, 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. **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- C. **CONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of **CONSULTANT** in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.
- D. **CONSULTANT** will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of **CONSULTANT'S** commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. If **CONSULTANT** should subcontract all or any portion of the services to be performed under this Agreement, **CONSULTANT** shall cause each subcontractor to also comply with the requirements of this Article (X).

#### **ARTICLE XI. INDEPENDENT CONTRACTOR**

- A. In the furnishing of the services provided for herein, **CONSULTANT** is acting solely as an independent contractor. Neither **CONSULTANT**, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venture, partner or associate of **CITY** for any purpose. **CITY** shall have no right to control or supervise or direct the manner or method by which **CONSULTANT** shall perform its work and functions. However, **CITY** shall retain the right to administer this Agreement so as to verify that **CONSULTANT** is performing its obligations in accordance with the terms and conditions thereof.
- B. This Agreement is not evidence of a partnership or joint venture between **CONSULTANT** and **CITY**. **CONSULTANT** shall have no authority to bind **CITY** absent **CITY'S** express written consent. Except to the extent otherwise provided in this Agreement, **CONSULTANT** shall bear its own costs and expenses in pursuit thereof.
- C. Because of its status as an independent contractor, **CONSULTANT** and its officers, agents and

employees shall have absolutely no right to employment rights and benefits available to **CITY** employees. **CONSULTANT** shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, **CONSULTANT** shall be solely responsible, indemnify, defend and save **CITY** harmless from all matters relating to employment and tax withholding for and payment of **CONSULTANT'S** employees, including, without limitation:

- (i) Compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and
- (ii) Any claim of right or interest in **CITY** employment benefits, entitlements, programs and/or funds offered employees of **CITY** whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, **CONSULTANT** may be providing services to others unrelated to **CITY** or to this Agreement.

#### ARTICLE X. NOTICES

All notices, including notices of address changes, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed to the addresses listed below:

- A. **CITY:** City of Grover Beach, **Bruce Buckingham, Community Development Director**, 154 South Eighth Street, Grover Beach, CA 93433
- B. **CONSULTANT:** [Insert Name and Title of Principal at Consulting Firm, Insert and label "mailing address", Insert and label "physical address" for special or hand-deliveries]

#### ARTICLE XI. BINDING

Subject to Article XII, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

#### ARTICLE XII. ASSIGNMENT

- A. This Agreement is personal to **CONSULTANT** and there shall be no assignment by **CONSULTANT** of its rights or obligations under this Agreement without the prior written approval of the Grover Beach City Council. Any attempted assignment by **CONSULTANT**, its successors or assigns, shall be null and void unless approved by the Grover Beach City Council.
- B. **CONSULTANT** hereby agrees not to assign the payment of any monies due **CONSULTANT** from **CITY** under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). **CITY** retains the right to pay any and all monies due **CONSULTANT** directly to **CONSULTANT**.

#### ARTICLE XIII. COMPLIANCE THE LAW

In providing the services required under this Agreement, **CONSULTANT** shall at all times comply with all applicable laws of the United States, the State of California and **CITY**, and with all applicable regulations

promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

#### **ARTICLE XIV. WAIVER**

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

#### **ARTICLE XV. GOVERNING LAW AND VENUE**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be San Luis Obispo County, California.

#### **ARTICLE XVI. HEADINGS**

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

#### **ARTICLE XVII. SEVERABILITY**

The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

#### **ARTICLE XVIII. INTERPRETATION**

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

#### **ARTICLE XIX. ATTORNEY'S FEES**

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

#### **ARTICLE XX. EXHIBITS**

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement

#### **ARTICLE XXI. PRECEDENCE OF DOCUMENTS**

In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

#### **ARTICLE XXII. CUMULATIVE REMEDIES**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

#### **ARTICLE XXIII. NO THIRD-PARTY BENEFICIARIES**

The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

#### **ARTICLE XXIV. EXTENT OF AGREEMENT**

Each party acknowledges that they have read and fully understand the contents of this Agreement and any documents issued that resulted in selection of **CONSULTANT** for entry into this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both **CITY** and **CONSULTANT**.



**CONSULTANT SCOPE OF WORK AND FEE SCHEDULE**

## **INSURANCE REQUIREMENTS**

Without limiting **CONSULTANT'S** indemnification of **CITY**, and prior to commencement of Work, **CONSULTANT** shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to **CITY**.

**General liability insurance.** **CONSULTANT** shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** **CONSULTANT** shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the **CONSULTANT** arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** **CONSULTANT** shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

**Workers' compensation insurance.** **CONSULTANT** shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

*Note: Workers' compensation and employer's liability insurance requirements may be eliminated for certain sole proprietorships, partnerships, or corporations without employees.*

Consultant shall submit to **CITY**, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of **CITY**, its officers, agents, employees and volunteers.

**Umbrella or excess liability insurance.** **CONSULTANT** shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

## **Other provisions or requirements**

**Proof of insurance.** **CONSULTANT** shall provide certificates of insurance to **CITY** as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by **CITY's** Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with **CITY** at all times during the term of this contract. **CITY** reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** **CONSULTANT** shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by **CONSULTANT**, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by **CONSULTANT** shall be primary and any insurance or self-insurance procured or maintained by **CITY** shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of **CITY** before the **CITY'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

**CITY'S rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, **CITY** has the right but not the duty to obtain the insurance it deems necessary and any premium paid by **CITY** will be promptly reimbursed by **CONSULTANT** or **CITY** will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, **CITY** may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the **CITY'S** Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against **CITY**, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow **CONSULTANT** or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. **CONSULTANT** hereby waives its own right of recovery against **CITY**, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** **CONSULTANT** acknowledges and agrees that any actual or alleged failure on the part of the **CITY** to inform **CONSULTANT** of non-compliance with any requirement imposes no additional obligations on the **CITY** nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the **CITY** requires and shall be entitled to

coverage for the higher limits maintained by the **CONSULTANT**. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the **CITY**.

**Notice of cancellation.** **CONSULTANT** agrees to oblige its insurance agent or broker and insurers to provide to **CITY** with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that **CITY** and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to **CITY** and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** **CONSULTANT** agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by **CONSULTANT**, provide the same minimum insurance coverage and endorsements required of **CONSULTANT**. **CONSULTANT** agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. **CONSULTANT** agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to **CITY** for review.

**CITY's right to revise specifications.** The **CITY** reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the **CONSULTANT** ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the **CONSULTANT**, the **CITY** and Consultant may renegotiate **CONSULTANT'S** compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by **CITY**. **CITY** reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by **CITY**.

**Timely notice of claims.** **CONSULTANT** shall give **CITY** prompt and timely notice of claims made or suits instituted that arise out of or result from **CONSULTANT'S** performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** **CONSULTANT** shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.



**CITY OF GROVER BEACH  
DISCLOSURE OF CONFLICT OF INTEREST**

		YES*	NO
1	Are you currently in litigation with the City of Grover Beach or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Grover Beach?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Grover Beach?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Grover Beach, or in a business which is in litigation with the City of Grover Beach?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Grover Beach employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

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Additional page(s) attached.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

## Attachment 2: 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:

#### 1. Equal Opportunity Requirements and Responsibilities

- A. **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
- B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act):** This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- C. **Restoration Act of 1987:** This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]:** This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- E. **The Fair Housing Amendment Act of 1988:** This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. **The Housing for Older Persons Act of 1995 (HOPA):** Retained the requirement that the housing facilities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.
- G. **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic

including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.

- H. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- I. **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- J. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- K. **Executive Order 11259:** This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- L. **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- M. **The Immigration Reform and Control Act (IRCA) of 1986:** Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (1-9).
- N. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.

- O. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
  - P. **Executive Order 11246:** This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.
2. **The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance (Section 3):** The Grantee will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing 24 CFR, Part 135. The responsibilities of the Grantee are outlined in 24 CFR Part 135. 32 as follows:
- A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
  - B. Notifying potential contractors for Section 3 covered projects of the requirements of this Part, and incorporating the Section 3 clause set forth in Section 135.38 in all solicitations and contracts in excess of \$100,000.
  - C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the appendix to this part, as appropriate, to reach the goals set forth in Section 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in Section 135.30.
  - D. Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR Part 135.
  - E. Documenting actions taken to comply with the requirements of this part, the results of those actions taken and impediments, if any.
  - F. A Grantee which distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in Section 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at Section 135.30. The State must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

3. **Environmental Compliance**

The Grantee shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Grantee. The level of compliance varies by activity. NEPA review must be completed by the Grantee for each activity and approved in writing by Department staff prior to incurring costs on the grant activity(ies).

4. **Clean Air and Water Acts**

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended from time to time.

5. **Relocation. Displacement and Acquisition**

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104( d)of the Housing and Community Development Act of 197 4 shall be followed where any assistance is carried out by the Grantee and assisted in whole or in part by funds allocated by CDBG. For projects where there will be temporary or permanent displacement, the Grantee must submit signed General Information Notices from each tenant who was residing in the project at the time of Application submittal.

6. **Compliance with Federal Laws and Regulations**

- A. The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines and requirements under 2 CFR Chapter I, Chapter II, Part 200 et al), as applicable, as they relate to the acceptance and use of federal funds under this part.
- B. The Grantee agrees to comply with all federal laws and regulations applicable to the CDBG Program and to the grant activity(ies), and with any other federal provisions as set forth.

7. **Federal Labor Standards Provisions**

- A. **Davis-Bacon Act (40 U.S.C. 3141-3148)** requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. **"Anti-Kickback Act of 1986" C41 U.S.C. 51-58)** prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself. This act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.

- C. **Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702)** requires that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- D. **Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1. 3 and 5** are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

## **8. Prevailing Wages**

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 1720-17 43] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Grantee and a licensed building contractor, the Grantee shall serve as the "awarding body" as that term is defined in the LC. Where the Grantee will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.
- C. The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in the State of California Labor Code (LC), Chapter 1, Section 1770- 1784 or the Davis-Bacon Wage Determination.

## **9. Lead Based Paint Hazards**

Activity(ies) performed with assistance provided under this Agreement are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR, Part 35 (Lead Disclosure). Any grants or loans made by the Grantee with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these regulations. The Grantee shall be responsible for the notifications, inspections, and clearance certifications required under these regulations.

**10. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials**

Pursuant to 24 CFR 570.489(h), 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.

**11. Conflict of Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**12. Anti-Job Pirating Certification**

Pursuant to 24 CFR 570.482(h) CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area to another labor market area if the relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant.

**13. Anti-Lobbying Certification**

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity(ies) 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. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 the awarding of any federal contract, the cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. 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, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**14. Rights to Inventions Made Under a Contract or Agreement**

If a Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of recipient or subrecipient must comply with 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 regulation issued by the awarding agency.

**15. Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

This clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

**16. Special Conditions Pertaining to Hazards. Safety Standards and Accident Prevention**

- A. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

- B. Danger Signals and Safety Devices: The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the USFS may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the USFS does not relieve the Contractor of any liability incurred under these specifications or contract.
- C. Protection of Lives and Health: The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the USFS may determine to be reasonably necessary.

**17. Bonus or Commission. Prohibition Against Payments of**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- A. Obtaining the Department's approval of the Application for such assistance; or,
- B. The Department's approval of the Applications for additional assistance; or,
- C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

**18. Contractors and Subrecipients**

- A. The Grantee shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

- 1) Contractors are defined as program operators or construction contractors who are procured competitively.
  - 2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded jurisdiction to undertake eligible activities.
- B. An agreement between the Grantee and any contractor or subrecipient shall require:
- 1) Compliance with the applicable State and federal requirements described in this Agreement, which pertain to, among other things, labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
  - 2) Maintenance of at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the grant activity(ies) or any part of it.
  - 3) Maintenance, if so required by law, of 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.
  - 4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.
- C. Contractors shall:
- 1) Perform the grant activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.
  - 2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.
- D. Subrecipients shall:
- 1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a minimum period of five (5) years after the Department notifies the Grantee that the HUD/HCD contract has been closed.
  - 2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts,

documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

E. Contractors and Subrecipients: Drug-Free Workplace Act of 1988

- 1) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- 2) Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- 3) Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within (5) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- 4) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- 5) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- 6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

**19. Insurance**

The Grantee shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Grantee and the Department to be necessary for specific components of the grant activity(ies) described in Exhibit A of Standard Agreement 17-CDBG-12027.

**20. Reporting Requirements**

During the term of this Agreement, the Grantee must submit the reports prescribed in the scope of work agreement. The Department reserves the right to request additional detail and support for any report made. Reports must be made according to the dates identified, unless otherwise specified at the discretion of the Department. The Grantee's performance under this Agreement will be based in part on whether it has submitted the reports on a timely basis.

**21. Monitoring Requirements**

The Department shall perform a program and/or fiscal monitoring of the grant. The Grantee shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately

resolved in a timely manner, the Department may deduct points from the Grantee's performance score on future applications.

In determining appropriate monitoring for each grant, the Department shall consider prior grant administration, audit findings, as well as factors such as complexity of the project and the amount of funding. The Department shall determine the areas to be monitored, the number of monitoring visits, and their frequency. The monitoring will address program compliance with contract provisions, including to but not limited to National Objective, financial management, the requirements of HCDA, 2 CFR Part 200 et al, as applicable, and all applicable Federal overlay requirements.

## **22. Inspections of Grant Activity**

The Department reserves the right to inspect any grant activity(ies) performed hereunder to verify that the grant activity(ies) is being and/or has been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.

- A. The Grantee shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure that the grant activity(ies) is being and has been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.
- B. The Grantee agrees to require that all grant activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.
- C. Access by the Grantee, the Subgrantee, the federal grantor agency, the State, the Controller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions pursuant to 24 CFR 85.36(i)(10).

## **23. Audit/Retention and Inspection of Records**

- A. The Grantee must have intact, auditable fiscal and program records at all times. If the Grantee is found to have missing audit reports from the California State Controller's Office (SCO) during the term of this Agreement, the Grantee will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Grantee will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Grantee's audit completion plan is subject to prior review and approval by the Department.
- B. The Grantee agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Grantee agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, 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 Grantee further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Grantee that the HUD/HCD contract has been closed. The Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.

- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Grantee. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant activity(ies).
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.
- E. For the purposes of annual audits, Grantee shall comply with 2 CFR Part 200 Subpart F for the State CDBG Program.
- F. Pursuant to 2 CFR Part 200 Subpart F, the Grantee shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are a general administration expense and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-related portion of the audit may be charged to the program in accordance with Public Law 98-502, 2 CFR Part 200 Subpart F, and Section 7122 of Title 25 CCR.
- G. Notwithstanding the foregoing, the Department will not reimburse the Grantee for any audit cost incurred after the expenditure deadline of this Agreement.
  - 1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
  - 2) If there are audit findings, the Grantee must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Grantee in writing. If the Department is not in agreement, the Grantee will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.
  - 3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.
  - 4) If so directed by the Department upon termination of this Agreement, the Grantee shall cause all records, accounts, documentation and all other

materials relevant to the grant activity(ies) to be delivered to the Department as depository.

**24. Signs**

If the Grantee places signs stating that the activity is funded with private or public dollars and the Department is also providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the project that the Department is a source of financing through the CDBG Program.

**25. Citizen Participation**

The Grantee is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

**26. Flood Disaster Protection**

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3(a) of said act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said act.
- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said act.
- C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

**27. Procurement**

The Grantee shall comply with the procurement provisions in 2 CFR Part 200.317 - 200.326, Procurement Standards as well as all other Administrative Requirements for

Grants and Cooperative Agreements to State, local and federally recognized Indian tribal governments as set forth in 2 CFR 200 et al, as applicable.

**28. Program Income**

A. General Requirements: Pursuant to the definition of PI found at 24 CFR 570.489(e)(2), repayments of assets generated from use of CDBG funds received by the Grantee from the Department are Program Income ("PI"). These repayments of loans, lease payments, and proceeds of asset sales will be deposited into one of three separate local PI accounts depending on what activity generated the PI.

- 1) The three separate PI accounts are:
  - a) General PI (which, if less than \$35,000 and is received within one fiscal year may be defederalized);
  - b) Housing (1-4 units) Revolving Loan Fund (RLF); and,
  - c) ED RLF.
- 2) Once the Grantee has a Department approved Housing (1-4 units) RLF or ED RLF, any PI received that was generated by the associated RLF activity must be deposited into that RLF.

This means PI received for Housing (1-4 units) activities must be deposited into the Housing RLF, and any ED PI received must be deposited into the ED RLF.

*Note: PI and each RLF must be in separate interest bearing accounts.*

- 3) If the Department has not approved a RLF, the Grantee must deposit all CDBG PI payments into a single interest bearing PI account.
- 4) If repayment comes from a loan or asset that was originally paid with CDBG and non-CDBG funds, the PI accounting and reporting must reflect the correct proportions and amounts, based on the CDBG and non-CDBG funds invested in the asset. Only the CDBG PI portion of the repayment is deposited into the CDBG PI or RLF account.
- 5) In order to spend PI, a Grantee must either have an active contract (a contract where the expenditure deadline has not passed), or a Department approved Program Income Reuse Agreement (Reuse Agreement) dated July 2014 or later.

B. PI and RLF Monies for Active Grant Contract Activities: All PI on hand must be always be expended on active contract activities prior to requesting contract funds from the Department.

If the Grantee has a Department approved RLF as well as an active contract that includes funding for the same RLF activity, the RLF funds on hand must be

expended before requesting contract activity funds reimbursement from the Department.

- C. PI General Administration CPI GA> for Grant Administration Costs Cup to allowable limits): A Grantee is allowed to use up to seventeen percent (17%) of all PI received for eligible GA costs. Since all PI must be expended first (before requesting reimbursement from contract funds), GA funds cannot be held and set aside to be used for PI GA costs as they are incurred. All PI must be spent on CDBG eligible costs before the next funds request may be submitted.

Thus, the Grantee must track an accounting of the 17% GA received and all GA expenditures. However, the PI GA allowance only applies to PI received that is not generated by RLF generated by RLF activities. RLF payments are not eligible for PI GA calculations.

PI GA funds cannot be used for planning studies; planning studies can only be funded under awarded grant contracts. See the PI Chapter of the Grant Management Manual (GMM) for further details on eligible PI GA activities under this Agreement.

- D. PI for an Approved RLF Activity: The two eligible RLFs and their corresponding definitions, as permitted by the Reuse Agreement, are:

- 1) Housing RLF - Eligible housing activities under this RLF include:
  - a) Housing Rehabilitation - Single Unit Residence Program for owner and/or tenant occupied properties - Matrix Code 14A.
  - b) Housing Rehabilitation - 2 to 4 Units Program for tenant occupied properties - Matrix Code 148.
  - c) Housing Acquisition Single Family Program for homebuyer assistance - Matrix Code 13.
- 2) ED RLF - Eligible ED activities under this RLF include:
  - a) Business Assistance Program (direct financial assistance to a for-profit business) - Matrix Code 18A.
  - b) Microenterprise Financial Assistance (loans) - Matrix Code 18C.

Written Department approval must be received before incurring any costs associated with any RLF activities. All approved RLF projects must be reported to the Department via the applicable Project Set-Up/Completion Reports.

Any PI that a Grantee expends on RLF activities becomes RLF funds and must be included in the RLF when repayment is received.

E. Grantees Leaving or Entering the State Non-Entitlement Program: Grantees must certify adherence to all State CDBG PI/RLF procedures when leaving or entering the State CDBG Program, including:

1) 24 CFR 570.489(e)(3)(iii) Transfer of PI to Entitlement Program:

A Grantee that either is an entitlement communities or is part of an urban agreement, or a Grantee that becomes an entitlement community or joins an urban agreement, has the following PI and RLF options:

PI not associated with a RLF:

- a) A Grantee must certify they will be reporting the State PI and activity into the Entitlement Programs process, including receipting CDBG proceeds and disbursements into IDIS; or,
- b) Return all State CDBG PI, including the amount of PI on hand at the time the HUD agreement is fully executed and any future PI generated by State CDBG funding to the Department, until all such State CDBG PI has been returned.

PI in an approved RLF:

Entitlement jurisdictions and those who are part of an urban agreement may keep their RLF(s) and monies within an RLF as long as the following is met:

- a) The entitlement/urban agreement jurisdiction has a Reuse Agreement signed by the Department and the City/County Authorized Representative.
- b) The entitlement/urban agreement jurisdiction will operate the RLF in compliance with the Department's RLF rules into the future.
- c) The entitlement/urban agreement jurisdiction will need to report on all expenditures, and accounting of RLF(s) as required by the Department.
- c) The entitlement/urban agreement jurisdiction will have loan servicing and asset management policies and procedures defined and in place, pursuant to the Department's Asset and Real Property Management Chapter in the GMM.

2) 24 CFR 570.489(e)(3)(iv) Transfer of PI of Grantees Losing Entitlement Status:

Entitlement PI and PI generated by State CDBG funds cannot be comingled.

Within 90 days of leaving the Entitlement Program to join the State CDBG Program, the authorized representative for any jurisdiction that has lost or has relinquished its entitlement status must submit a letter to the Department certifying that the jurisdiction will either:

- a) Repay or retain PI generated under entitlement grants and continue to comply with the Entitlement Program requirements for PI, including reporting it into IDIS or to the urban county; or,
- b) Retain the PI, identify the total PI and RLF on hand and loan portfolio balances to be transferred to the State CDBG Program and agree that the jurisdiction will comply with all of the State's rules for PI and RLF by executing a Reuse Agreement and obtaining the Department's approval for any RLFs.

**29. PI Reuse Agreement**

The Grantee must adopt and submit the most current Reuse Agreement provided by the Department. The Reuse Agreement is not in effect until it has been executed by the Department.

**30. Obligations of Grantee with Respect to Certain Third Party Relationships**

The Grantee shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Program with respect to which assistance is being provided under this Agreement to the Grantee. The Grantee shall comply with all lawful requirements of the Department necessary to ensure that the Program, with respect to which assistance is being provided under this Agreement to the Grantee, is carried out in accordance with the Department's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)].

**31. Energy Policy and Conservation Act**

This Agreement is subject to 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).

**32. State Contract Manual Requirements (Section 3.11. Federally Funded Contracts (Rev. 3/03)):**

- A. All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:
  - 1) It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
  - 2) This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the purpose of this Program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.

- 3) The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
  - 4) The department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.
- B. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the State agency can certify in writing that Federal funds are available for the term of the contract.
- C. GC § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.