



REQUEST FOR PROPOSAL
for
Community Development Block Grant Administration

Release Date: October 24, 2024

Proposals Due by: November 22, 2024

No later than 3:00 p.m.

City of Marysville, 526 C Street Marysville, CA 95901

City of Marysville
Request for Proposals for
Community Development Block Grant Administration

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Introduction

The City of Marysville (City) is seeking professionals with experience guiding and administering CDBG programs including grant applications and monitoring. The City will select a Consultant who have project experience in the areas of Community Facilities/Public Services, Public Works, Housing and Economic Development. The City will select the most qualified Consultant or Firm (Consultant) with expertise in these areas.

The Federal Housing and Urban Development (HUD) Agency provides funds to states to principally benefit low-income people, eliminate slums and blight, and/or meet an urgent community development need. The California Department of Housing and Community Development (HCD) administer this funding to local jurisdictions through the Community Development Block Grant (CDBG) program. The City is seeking consultants to prepare proposals and implement CDBG programs and projects. The City has previously received CDBG funding for housing rehabilitation, street reconstruction, a Wildland Firetruck, and provided senior services during the Coronavirus pandemic.

HUD and HCD require local jurisdictions to follow stringent federal and state laws and regulations. Numerous and often complex reporting requirements must be met in a timely fashion. The City is seeking a response to this Request for Proposal from qualified consultants to administer and implement the City's CDBG and programs for the next three years with the option to extend two additional years.

This RFP includes a description of the scope of work, proposal requirements and instructions for submitting your proposal. No formal meeting is required for this RFP. If it becomes necessary to revise any part of the RFP, written addenda will be issued and posted on the City's Website.

Scope of Services

The items to be included in the Scope of Services are indicated below. All work items will be carried out in conjunction with City staff direction, input, and review.

- 1) Prepare notification for and be present at all appropriate public meetings and hearings if required.
- 2) Prepare funding applications for Community Development Block Grants as requested by the City.
- 3) Complete all contract special conditions including environmental review, anti- displacement and relocation assistance plan, program income reuse plan, etc.
- 4) Prepare program guidelines.
- 5) Assist in the preparation of contracts, as requested, for subcontractors and sub-recipients.
- 6) Complete all program reporting of all financial and performance reports required by the program (i.e., monthly, quarterly, annual, closeout, etc.) to HCD.
- 7) Maintain all program fiscal records including preparation of Cash Requests, monitoring payments to subcontractors, and coordination with Finance Director.
- 8) Ensure that all the required administrative files are established and maintained including maintaining the required Public Information Binder.
- 9) Act as principal liaison between all applicable HCD personal and the City.
- 10) Oversee program Equal Opportunity compliance including referrals for housing discrimination complaints, including preparation of necessary language regarding equal opportunity, Section 3, Section 504, etc. in advertisements, bid packages and contracts.
- 11) Prepare program records for monitoring by State representatives, conduct site visits, respond to comments and correct any findings required by HCD.
- 12) Monitor program milestones and recommend amendments as necessary.
- 13) Attend any CDBG related trainings or informational meetings conducted by HCD.
- 14) Appraise the City of all applicable federal and state requirements related to the funds and facilitate the meeting of such requirements.

Schedule for Performance

Consultant must meet all administrative milestones set forth in any CDBG contract made as part of this agreement.

Proposal Format Requirements

The response to the Request for Proposal 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.

This shall include, but is not limited to the following:

- 1) Cover Letter. Include the following information:
 - a) Title of this RFP
 - b) Name and mailing address of company
 - c) Contact person, email address, telephone and fax numbers
 - d) The cover letter must be signed by an officer empowered by the Consultant to sign such material and thereby commit the Consultant to the obligations contained in the RFP response. Further, the signing and submission of a response shall indicate the intention of the proposer to adhere to the provisions described in this RFP and a commitment to enter a binding contract.
- 2) Statement of Qualifications (SOQ).
 - a) A statement of the professional qualifications and experience of the Consultant as it pertains to the successful implementation of CDBG community facilities, public services, infrastructure, economic development and planning projects. Include a list of jurisdictions for which your firm has prepared proposals for and/or administered and implemented CDBG projects.
 - b) Provide a summary of the company's experience in providing these services. Provide a minimum of three references for related consulting services and include date, contact person, phone number and a brief description of the services provided.
 - c) Provide a statement of the Consultants' policy regarding affirmative action and indication if the Consultant is a small business and/or minority or woman-owned business.
 - d) Provide the resumes of key personnel from the Consultant who would be assigned to the City to work on CDBG activities.
 - e) Provide a detailed discussion of your company's approach to providing CDBG administration to the City and staff's availability to conduct the required work.
- 3) Scope of Work. A description of the proposed scope of work and methodology, including proposed schedule, if applicable.
- 4) Proposed Costs/Budget.
 - a) Hourly rate for each project member who would be assigned to this project.
 - b) Provide a preliminary cost estimate for each type of grant.
 - c) Provide a cost estimate for application preparation for each type of grant.
 - d) Other expenses that are requested to be reimbursed.
- 5) Knowledge of the City of Marysville (list any previous experience with the City, whether related to HCD programs or not).
- 6) Acknowledgement that the Standard Agreement for Professional Services (Attachment A) is acceptable as presented or note any issues or required changes from the submitting Consultant. If no exceptions are indicated, it will be assumed that the Consultant is prepared to enter into the Agreement as written, which will be executed upon completion of the evaluation and recommendation for award to the selected Consultant. Any modifications or amendments shall be made by mutual agreement between the City and Consultant prior to execution of the agreement.

Submittal Instructions

Your submittal package shall include the following:

- 1) Submit five (5) hard copies and one (1) electronic copy in Portable Document Format (PDF) (labeled, USB flash memory device) of the Consultant's proposal. The hard copies shall be mailed or submitted to 526 C Street, Marysville, CA 95901 prior to and be received by **3:00 pm on Friday, November 22, 2024**, in a sealed package to:

City of Marysville
City Clerk
526 C Street
Marysville, CA 95901
Attention: Nadine Sims
- 2) Submittals received after the time and date specified above will be considered nonresponsive. Nonresponsive submittals may be picked up at the delivery location within fourteen (14) calendar days of contract award and/or the completion of the competitive process.
- 3) Any submittals received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant to the City Clerk. To be considered, however, the modified submittal must be received prior to **3:00 pm on Friday, November 22, 2024**.
- 4) Unsigned submittals or submittals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.
- 5) This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The City reserves the right to accept or reject any or all RFP's received because of this request, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the City to do so. Furthermore, a contract award will not be made based solely on price.
- 6) The prospective Consultant is advised that should this RFP result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the City.
- 7) All products used or developed in the execution of any contract resulting from this RFP will remain in the public domain at the completion of the contract.
- 8) The anticipated Consultant selection schedule is as follows:
 - a) RFP review and evaluation: November – December 2024
 - b) Interview and selection: December 2024
 - c) Award: January 2025
- 9) Any questions related to this RFP shall be submitted in writing to the attention of Jennifer Styczynski, Finance Director, via email at jennifers@marysville.ca.us. Questions shall be submitted before 1:00 pm, one week prior to the due date.

Evaluation Criteria

The following evaluation criteria will be used to determine the most highly qualified Consultant(s).

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

- 1) The proposal is complete and is in compliance with the RFP.
- 2) Prospective Consultant 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 Consultant 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.

Cost, while an important factor, will not be the sole determining factor. The contract will be awarded to the Consultant 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 Consultant. Proposals will be evaluated based on the following criteria:

Evaluation Score Methodology:	Points Available:
Background, experience and qualifications of the Consultant in CDBG program administration and implementation	30
Experience and qualifications of individuals identified in the Consultant's project team	20
Thoroughness of the Scope of Work, milestones, schedule, cost analysis, and approach to completing the project	20
Quality of feedback provided by references	15
Demonstrated ability to perform tasks/projects in a timely and efficient manner	<u>15</u>
Total	100

The City may elect to interview the most qualified Consultants as evidenced by the submitted proposals to negotiate final costs/anticipated effort. 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.

The City of Marysville is an Equal Opportunity Employer.

Disputes Relating to Proposal Process

Any dispute arising from the proposal process prior to the award of the contract must be submitted in writing to Jim Schaad, City Manager, within ten (10) calendar days of the date of the recommendation award or denial letter. The only grounds for an appeal that will be considered are that the City failed to follow the selection procedures specified in this RFP or that 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 will make their determination within thirty (30) days of receipt and their decision shall be final with respect to the matters of fact.

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ("Agreement") entered into this ____ day of _____ 2025, is between the City of Marysville, a charter city and municipal corporation of the State of California located at 526 C Street, Marysville, CA 95901, ("City") and _____, with its primary office located at _____ ("Consultant").

RECITALS

- A. The Consultant is specially trained, experienced and competent to provide the professional services required by this Agreement.
- B. The Consultant possesses the skill, experience, ability, background, license, certification, as required by law and knowledge to provide the professional services described in this Agreement in accordance with the terms and conditions described herein.
- C. City desires to retain Consultant to render the professional services as set forth in this Agreement.

Now, therefore, it is agreed by and between City and Consultant as follows:

AGREEMENT

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Scope of Service.

(a) Services to be Furnished. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

(b) Term of Service. The term of this Agreement shall commence upon execution of this Agreement and shall continue for three years with an option to extend for two additional years or until terminated as set forth in Section 5 (Termination and Modification) of this Agreement.

(c) Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

(d) Compliance With Laws. Consultant shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. Consultant represents and warrants to City that Consultant shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. Consultant shall maintain a City of Marysville business license. Consultant shall always during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by City. City is not responsible or liable for Consultant's failure to comply with any or all the requirements contained in this paragraph.

(e) Time Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Consultant's obligations hereunder.

3. Compensation. City hereby agrees to pay Consultant in accordance with Exhibit B, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's cost proposal, hereby incorporated by reference, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth

herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

(a) Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed incurred prior to the invoice date. Invoices shall contain the following information:

- i. Serial identifications of progress bills, i.e., Progress Bill No. 1 for the first invoice, etc.
- ii. The beginning and ending dates of the billing period.
- iii. A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion.
- iv. The Consultant's signature.

(b) Invoice Payment. City shall make payments, based on invoices received, for tasks satisfactorily completed. City shall have up to forty-five (45) days from the receipt of an invoice that complies with all the requirements above to pay Consultant.

(c) Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

(d) Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

(e) Payment upon Termination. If the City or Consultant terminates this Agreement pursuant to Section 5, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

(f) Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

4. Term of Agreement. This Agreement shall be effective immediately and shall remain in effect until completed pursuant to Section 2(b), amended pursuant to Section 6, or terminated pursuant to Section 5.

5. Termination and Modification.

(a) Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

(b) Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

(c) **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the Consultant reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

(d) **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

(e) **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

- i. Immediately terminate the Agreement.
- ii. Retain any other work product prepared by Consultant pursuant to this Agreement.
- iii. Retain a different Consultant to complete the work described in Exhibit A not finished by Consultant; or
- iv. Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

6. **Amendments.** Modifications or amendments to the terms of this Agreement shall be in writing and executed by both parties.

7. **Nondisclosure of Confidential Information.** Consultant shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of City without the prior written consent of City.

8. **Inspection.** City representatives shall, with reasonable notice, have access to the work and work records of Consultant, including time records, for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement.

9. **Independent Contractor.** In the performance of the services in this Agreement, Consultant is an independent contractor and is not an agent or employee of City. Consultant, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit City to any decision or course of action, and shall not represent to any person or business that they have such power. Consultant has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting Consultant in the performance of said service hereunder. Consultant shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

10. **Notices.** Any notices or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:

- (a) By personal delivery, effective upon receipt by the addressee.
- (b) By facsimile, effective upon receipt by the addressee, so long as a copy is provided by certified U.S. mail, return receipt requested, postmarked the same day as the facsimile.
- (c) By certified U.S. mail, return receipt requested, effective 72 hours after deposit in the mail.

City: City of Marysville
Attn: City Manager
526 C Street
Marysville, California 95901
(530) 749-3901

With a Copy to: Rich, Fuidge, Bordsen & Galyean, Inc.
Attn: Brant J. Bordsen, City Attorney

1129 D Street
Marysville, California 95901
(530) 742-7371

Consultant: [Consultant]
Attn: [Consultant]
[Address]
[City, State, Zip Code]
(XXX) XXX-XXXX

Either party may change its address for notices by complying with the notice procedures in this Section.

11. Ownership of Materials. City is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of City, Consultant shall deliver to City all writings, records, and information created or maintained pursuant to this Agreement and for which Consultant has been paid in accordance with this Agreement.

12. Assignment; Subcontracting; Employees.

(a) Assignment. Consultant shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of City. Any assignment without such approval shall be void and, at City's option, shall terminate this Agreement and any license or privilege granted herein.

(b) Subcontracting. Consultant shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior express written consent of City. If City consents to Consultant's hiring of subcontractors, all subcontractors are deemed to be employees of Consultant and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all its employees and subcontractors, if any, and shall keep the work under its control.

13. Binding Agreement. This Agreement shall bind the successors of City and Consultant in the same manner as if they were expressly named herein.

14. Waiver.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance later.

15. Nondiscrimination.

(a) Consultant shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer because of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability.

(b) Consultant shall comply with all federal and state anti-discrimination and civil rights laws.

(c) Consultant agrees to post in conspicuous places, available to all employees and applicants for employment, notices that Consultant shall provide an atmosphere for employees, clients, and volunteers that is free from harassment or discrimination.

16. Indemnity. Contractor specifically agrees to indemnify, defend, and hold harmless the City, its officials, officers, members, agents, employees and volunteers (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, and costs, (collectively "Losses") arising out of or in any way connected with the performance of this Agreement. Contractor shall pay all costs and expenses that may be incurred by the City in enforcing this indemnity, including reasonable attorneys' fees. The duty to defend Indemnitees from the Losses is a separate obligation from the obligation to indemnify. The duty to defend arises immediately upon notice of a claim and continues until such claim is finally resolved. The duty to defend applies even if the claim is meritless. The duty to defend applies even if it is claimed that the City is responsible for the alleged Losses. The provisions of this section survive the expiration, termination, or assignment of this Agreement.

17. Insurance Requirement. Consultant, at its sole cost and expense, shall obtain and maintain in full force and

effect throughout the entire term of this Agreement, the insurance coverage and policies as set forth in Exhibit B attached hereto. The City reserves the right to request updated insurance requirements as declared by the City's insurance carrier.

18. Workers' Compensation.

(a) Covenant to Provide. Consultant warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. Consultant further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, agents, and employees for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for City.

19. Financial Records. Consultant shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for three (3) years after the expiration of this Agreement. City or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

20. Conflict of Interest. Consultant shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the City's interest. During the term of this Agreement, Consultant shall not accept any employment or engage in any consulting work which creates a conflict of interest with City or in any way compromises the services to be performed under this Agreement. Consultant shall immediately notify City of all violations of this Section upon becoming aware of such violation.

21. Time of the Essence. Consultant understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

22. Severability. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

23. Governing Law and Choice of Forum. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Consolidated Municipal and Superior Court of Sutter County.

25. Costs and Attorney's Fees. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

26. Authority. The parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

27. Force Majeure. Except as otherwise provided in this Agreement, if the performance of any act required by this Agreement by either City or Consultant is prevented or delayed by reason of any act of God, strike, act of terrorism, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations or any other cause not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

28. Integration. This Agreement represents the entire understanding of City and Consultant as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 6.

SIGNATURES ON NEXT PAGE

Executed by City and Consultant on the date shown next to their respective signatures. The effective date of this Agreement shall be the date of execution by the City as shown below.

City of Marysville

[Consultant]

By: _____
Jim Schaad, City Manager

By: _____

Title: _____

Approved as to Form:

By: _____
Brant J. Bordsen, City Attorney

Business License #: _____

Taxpayer ID Number: _____

Attest:

By: _____
Nadine Sims, City Clerk

Attestation Date: _____

- Attachments:
- Exhibit A – Scope of Service
 - Exhibit B – Budget
 - Exhibit C – Insurance Requirements
 - Exhibit D – CDBG Terms and Conditions

EXHIBIT A
SCOPE OF SERVICES

The items to be included in the Scope of Services are indicated below. All work items will be carried out in conjunction with City staff direction, input, and review.

- 1) Prepare notification for and be present at all appropriate public meetings and hearings if required.
- 2) Prepare funding applications for Community Development Block Grants as requested by the City.
- 3) Complete all contract special conditions including environmental review, anti- displacement and relocation assistance plan, program income reuse plan, etc.
- 4) Prepare program guidelines.
- 5) Assist in the preparation of contracts, as requested, for subcontractors and sub-recipients.
- 6) Complete all program reporting of all financial and performance reports required by the program (i.e., monthly, quarterly, annual, closeout, etc.) to HCD.
- 7) Maintain all program fiscal records including preparation of Cash Requests, monitoring payments to subcontractors, and coordination with Finance Director.
- 8) Ensure that all the required administrative files are established and maintained including maintaining the required Public Information Binder.
- 9) Act as principal liaison between all applicable HCD personal and the City.
- 10) Oversee program Equal Opportunity compliance including referrals for housing discrimination complaints, including preparation of necessary language regarding equal opportunity, Section 3, Section 504, etc. in advertisements, bid packages and contracts.
- 11) Prepare program records for monitoring by State representatives, conduct site visits, respond to comments and correct any findings required by HCD.
- 12) Monitor program milestones and recommend amendments as necessary.
- 13) Attend any CDBG related trainings or informational meetings conducted by HCD.
- 14) Appraise the City of all applicable federal and state requirements related to the funds and facilitate the meeting of such requirements.

Schedule for Performance

Consultant must meet all administrative milestones set forth in any CDBG contract made as part of this agreement.

**EXHIBIT B
BUDGET**

[To be provided by Consultant]

EXHIBIT C INSURANCE REQUIREMENTS

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 and the results of that work by the Consultant, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

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.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except with notice to the City.**

Waiver of Subrogation

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and

related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any of the required policies provide claims-made coverage:

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

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance

EXHIBIT D
CDBG TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department of Housing and Community Development (Department).

- A. The Grantee cannot incur any costs until the execution of the contract unless prior written approval has been given by CDBG management.
- B. For certain activities, the Grantee must receive the Authority to Use Grant Funds from the Department prior to the commitment and/or commencement of Work.
- C. A Grantee cannot be reimbursed for any costs until the Department has issued written clearance of all general conditions' requirements.

2. Sufficiency of Funds and Termination

- A. The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days written notice to the Grantee. Cause shall consist of violations of any terms and/or special conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.
- B. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties to avoid program and fiscal delays which would occur if this Agreement were executed after the determination was made.
- C. This Agreement 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 Agreement 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 Agreement in any manner.
- D. If Congress does not appropriate sufficient funds for the program, the Department may amend this Agreement to reflect any reduction in funds, or it may terminate this Agreement by giving fourteen (14) days written notice to the Grantee.

3. Termination for Convenience and Enforcement

- A. Except as provided in 24 CFR 85.43, awards may be terminated in whole or in part only as follows:
 - i. The Department with the consent of the Grantee or Subgrantee in which case the two parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or by the Grantee or Subgrantee upon written notification to the Department, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the Department determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either 24 CFR 85.43 or paragraph (A) of this Section.
- B. Enforcement for noncompliance may include the following remedies if a Grantee or Subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances.
 - i. Temporarily withhold cash payments pending correction of the deficiency by the Grantee or Subgrantee or more severe enforcement action by the awarding agency.
 - ii. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.
 - iii. Wholly or partly suspend or terminate the current award for the Grantee's or Subgrantee's program.

- iv. Withhold further awards for the program.
- v. Take other remedies that may be legally available.
 - a. Hearings, appeals. In taking an enforcement action, the awarding agency will provide the Grantee or Subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the Grantee or Subgrantee is entitled under any statute or regulation applicable to the action involved.
 - b. Effects of suspension and termination. Costs of Grantee or Subgrantee resulting from obligations incurred by the Grantee or Subgrantee during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee or Subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if:
 - 1. The costs resulting from obligations which were properly incurred by the Grantee or Subgrantee before the effective date of suspension or termination, are not in anticipation of suspension or termination; and, in the case of a termination, are noncancelable, and,
 - 2. The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the termination takes place.
 - 3. Relationship to debarment and suspension. The enforcement remedies identified in this Section, including suspension and termination, do not preclude a Grantee or Subgrantee from being subject to 2 CFR part 2424. CDBG funds may not be provided to excluded or disqualified persons per 24 CFR 570.489(i).

4. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

5. National Objectives

All grant activities performed under this Agreement must be eligible and must meet one of the National Objectives of the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974 Section 104(b)(3), as amended and 24 CFR Part 570.483.

- A. Primarily Benefits HUD defined low- or moderate-income person(s) (LMI) or household(s) (LMH). The term low- or moderate-income limits are defined as being no more than 80% of the median area income, annually determined by HUD, per 24 CFR, Part 570.483(b); and/or,
- B. Elimination of Slums or Blight (on a spot or area basis) is an eligible CDBG National Objective. Slums and Blight's definition is found in 24 CFR, Part 570.483(c). The use of Slums or Blight requires prior Department written approval.
- C. Meeting an Urgent Need is an eligible CDBG National Objective under 24 CFR, Part 570.483(d). This National Objective can only be used after formal release of public notice from the Department announcing the disaster event and requesting grantees impacted by the disaster to submit proposals by grantees describing how this National Objective is being met by eligible activities under this Agreement.

6. Public Benefit for Special ED

Per 24 CFR 482(f) and (g), the Grantee is responsible to demonstrate fulfillment of the Public Benefit requirement for all CDBG ED activities that involve assistance to for-profit businesses under Section 105(a)(14)-(17) of The Act. These ED activities must also comply with CDBG's six (6) underwriting standards, per 24 CFR, Part 570.482 (e).

7. Waivers

No waiver or any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Grantee of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

8. Uniform Administrative Requirements

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines and requirements of 24 CFR part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128 (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at Section 570.502.

9. Non-Performance

In the event that the National Objective and/or Public Benefit requirements are not met, the Department may, in its sole discretion, impose any or all of the following remedies: recapture of part or all of any PI; reimbursement of part or all of the grant amount; and/or exclusion of the Grantee from further CDBG funding for a period of time to be determined by the Department.

Prior to closing out this Agreement, the Department shall review the actual National Objective and/or Public Benefit achievements of the Grantee.

10. Affirmatively Furthering Fair Housing

The Grantee will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

11. 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 based on race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes 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 based on 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 [42U.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 person's age 55 or older.
- F. The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that 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 based on 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 KAR2:095 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 based on 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 based on race.
12. 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 (12U.S.C. 1701u), and implementing per 24 CFR, Part 135. The responsibilities of the Grantees 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.

- 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 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. 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.

13. 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 for the grant activity(ies).

14. 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.

15. 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 1974 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.

16. Compliance with State and Federal Laws and Regulations

- A. The Grantee agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Grantee, its Subgrantees, contractors or subcontractors, and the grant activity, as well as any other State provisions as set forth in Exhibit C.
- B. The Grantee agrees to comply with all federal laws and regulations applicable to the CDBG Program and grant activity(ies), and with any other federal provisions as set forth.

17. 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" (41 U.S.C. 51-58) The Act 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

are 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 worker 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.

18. 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 1720-1743) (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 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. Anti-Lobbying Certification

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered 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 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 federally 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.

24. 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 Application 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.

25. 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.
 - i. Contractors are defined as program operators or construction contractors who are procured competitively.
 - ii. 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:
 - i. Compliance with the applicable State and Federal requirements described in this Agreement, which pertain to, among other things, labor standards, non-discrimination, 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.

- ii. 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.
 - iii. 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.
 - iv. Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.
- C. Contractors shall:
- i. Perform the grant activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.
 - ii. 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:
- i. 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.
 - ii. 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
- All organizations covered by the Drug-Free Workplace Act of 1988 are required to provide a drug-free workplace by taking the following steps:
- i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.
 - vi. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

26. 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 C.

27. Periodic Reporting Requirements

During the term of this Agreement, the Grantee must submit the following reports by the dates identified, respectively, or as otherwise required 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.

- A. Semi -Annual PI Report: Submit by January 31 and July 31.
- B. Annual Performance Report (APR): Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.
- C. Annual Section 3 Reports: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.
- D. Annual Minority Owned Business/ Women Owned Business (MBE/WBE) Report: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.
- E. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed. The Department reserves the right to request any other reports that may be necessary for the implementation of this Agreement.

28. 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, 24 CFR Part 85, 24 CFR 570 Part I, and all applicable federal overlay requirements.

29. 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 sub recipients hereunder to ensure 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.
- 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, subcontractor, or sub-recipient, respectively, until it is so corrected.

30. Access

Access by the Grantee, the Subgrantee, the federal grantor agency, the State, the Comptroller 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).

31. Audit/Retention and Inspection of Records

- A. The Grantee must have intact, auditable fiscal and program records always. 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 allowance of any expenditure shall be final.
- E. For the purposes of annual audits under OMB Circular A-133, Grantee shall use the Federal Catalog number 14.228 for the State CDBG Program.
- F. Pursuant to OMB Circular A-133, 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 general administration expenses 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, OMB Circular A-133, 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.
 - i. 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.
 - ii. 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.
 - iii. The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.
 - iv. 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.

32. 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.

33. 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.

34. 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 Federal Emergency Management Agency (FEMA) 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 in an area identified by FEMA as having special flood areas 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.

35. Procurement

The Grantee shall comply with the procurement provisions in 24 CFR, Part 85.36, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

36. Program Income

PI means gross income earned by the Grantee from grant-funded activities and is subject to CDBG regulatory requirements pursuant to 24 CFR, Part 570.489(e) – Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 85 - Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as applicable. These regulations include the requirement that the Grantee record receipt and expenditure of PI as part of the financial transactions of the grant activity(ies). Grantees are also subject to all provisions in Attachment A, Item 6.

37. 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.

38. 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 [42u.s.c. 5304(g)].

39. 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).