

# CITY OF LAKEPORT, CALIFORNIA REQUEST FOR PROPOSALS WATER & SEWER RATE STUDY

## ***INTRODUCTION:***

The City of Lakeport is requesting proposals from qualified financial consultants to conduct a comprehensive water and sewer rate analysis. The intent of the study is to independently assess and evaluate the City of Lakeport's existing water and sewer rates and provide recommendations.

## ***BACKGROUND:***

The City of Lakeport ("City") is a general law city, incorporated in 1888, with a population of approximately 5,100. The City has approximately 50 full time equivalent employees. The City Council is comprised of five elected residents with the City Manager as the administrative and executive head of the City. The members of the City Council also sit as the Board of Directors for the City of Lakeport Municipal Sewer District (CLMSD).

The City's Public Works Department manages the functions necessary to provide water and sewer services to the City's residents and businesses. The Department receives revenue for these services through water and sewer rates that are billed monthly. A rate analysis of the water and sewer enterprises was last completed in 2012.

Funding for this project is approved in the current 2020/2021 budget.

## **SCOPE OF WORK**

### ***A. OBJECTIVE:***

The objective of the study is to adequately fund water and sewer operations, capital costs, and bonded debt while minimizing rates to the greatest degree possible. Water and sewer rates developed must:

- Be fair and objective and ensure that rates cover the City's reasonable costs of providing water and sewer service to City customers, consistent with Proposition 218.
- Fund certain capital projects, as identified in the 2008 Water and Sewer System's Master Plan.
- Utilize a proper industry index for inflation adjustments.
- Recommend a prudent reserve policy for operations, capital replacement and emergencies.

### ***B. STUDY REQUIREMENTS:***

The study is to be performed in conformance with the following policy directions:

1. The recommended rate structures shall be based on cost of service, consistent with Proposition 218 requirements, and shall be sufficient to meet the City's revenue requirements.
2. The study shall recommend rate structures that consider and make provisions for the following factors:
  - a. Current and future cost of providing utility service in accordance with established and anticipated standards and regulations.
  - b. Age and condition of the City's existing facilities and systems.
  - c. Funding requirements for all current long-term liabilities and debt obligations.
  - d. Impact of current and future environmental regulations.
  - e. Other impacts, as identified by the City or consultant.
3. The recommended rate structures shall provide direct identification of revenues appropriate to fund operating activities and infrastructure.
4. The recommended rate structures shall be consistent with industry practice for utility rate making in California, including industry practice in California for encouraging conservation.
5. The benefits of any proposed modifications to existing rates shall be weighed against the financial impacts on ratepayers.
6. The recommended rate structure shall not result in a decrease in stability of the revenue stream to the Water and Sewer funds, as compared to the current structure.
7. Consideration shall be given to funding past and future depreciation (replacement of capital assets).
8. The recommended rate structure shall consider the type and amount of reserves appropriate to the City's water and sewer operations, taking into consideration reserves for cash flow, catastrophes, infrastructure replacement and other appropriate purposes.
9. The recommended rate structure shall be easy to administer and understand.

**C. STUDY ELEMENTS:**

In making its rate structure recommendations, the final report shall explicitly include the following elements and analysis:

1. **Current Rate Structure:** Assess the current rate structure's performance as a baseline for comparing recommended changes.
2. **Equity:** Assess the equity of recommended water and sewer rates for all types of property ownership.
3. **Conservation Impacts:** Assess the interaction between the water conservation elements of the recommended rate structure and their impacts on the ability to fund water operations as well as their impact on the economic well-being of the community. Assess the impact of future drought on rates and recommendations for addressing demand and supply reduction.
4. **Environmental Regulations:** The study shall include an assessment of the revenue stream generated by the recommended rate structure and its ability to continue to fully fund water and sewer system costs, including the impacts of future environmental regulations and standards.
5. **Annual Operating Fund Balance Targets:** Recommend reserve levels for operating, capital replacement, bond requirements, as well as cash flow and unforeseen events.

6. Comprehensive Summary of Recommended Rate Structure(s): Assess performance of each recommended rate structure and provide recommendation on preferred rate structure.

**D. SERVICES TO BE PROVIDE BY CONSULTANT**

1. Conduct a detailed review of the existing water rates and status of the Water and Sewer Funds, and develop a general familiarity with the City of Lakeport billing system.
2. Meet or confer with staff as needed.
3. Attend a minimum of three evening meetings of the City Council/City of Lakeport Municipal Sewer District (CLMSD) to present draft rate study, and a hearing where the final plan and rates are considered for adoption.
4. Conduct analyses as required to address the scope of work.
5. Supply a time schedule for developing the preliminary and final reports consistent with section 4 of the proposal requirements and content below.
6. Provide a rate survey of comparable utilities in Lake County and surrounding counties with similar demographics.
7. Preliminary Report:
  - a. Provide an executive summary of draft report.
  - b. Prepare a preliminary study report and tentative rate structure.
  - c. Submit one electronic and 10 bound copies
  - d. Present preliminary report and tentative rate structure to the City Council/CLMSD Board at a Council Workshop.
8. Draft Final Report
  - a. Provide an executive summary of report.
  - b. Incorporate changes pursuant to comments received at the City Council/CLMSD Board Workshop.
  - c. Submit one electronic and 10 bound copies.
  - d. Present draft final report and tentative rate structure to the City Council/CLMSD Board at a formal public hearing.
9. Final Report
  - a. Incorporate changes pursuant to comments received at the City Council/CLMSD Board from public hearing.
  - b. Submit 15 copies, plus one electronic copy.
  - c. Provide a flash drive with report in MS Word format, with spreadsheets in Excel format.
10. Provide an easy to use electronic rate model in MS Excel or Access for the City to use in case of future rate modifications.

**E. SERVICES TO BE PROVIDED BY THE CITY OF LAKEPORT**

The services to be provided by the City of Lakeport include, but are not limited to the following:

1. Furnish all reasonably available records and information, including financial reports, budgets, consumption data, meter sizes and customer classes for the City of Lakeport, as well as for any out-of-City utility customers.
2. Provide an electronic copy of the Water and Sewer System's Master Plan prepared in 2008.

3. Provide all relevant information the City of Lakeport has pertaining to the City and its operations including operating and capital budgets, and current Resolutions and related documents.
4. Provide information on recent Capital Improvement Project planning.
5. Provide staff support and assistance as required and agreed to in advance of the study.

## **PROPOSAL REQUIREMENTS AND CONTENTS**

In anticipation of your interest in this Study, proposals submitted for this Study are to follow the outline described below and must address all requested information.

Please submit one (1) original signed version and five (5) copies of the Proposal (six (6) copies in total).

### **Section 1 Study Overview**

Provide a narrative description of the Study based on the Scope of Work presented in the Request for Proposal (RFP). City staff will assess the Consultant's understanding of all aspects of the Study based on the overview.

### **Section 2 Detailed Work Plan**

Provide a description of the required tasks and duties for preparation of the Study. The description shall include details as described in the Scope of Work and any recommended additions. Include any assumptions used in development of the work tasks including assistance expected from City staff. Also, identify any unique approaches or strengths that your firm may have related to this Study. Identify Study meetings anticipated and show those meetings on the Study schedule (see Section 4 below).

### **Section 3 Study Team**

The Study team shall be identified with key tasks and the associated responsible personnel should be identified. A Study team organization diagram and summary resume of pertinent experience for each team member shall be included. The geographic location of the firm and key personnel shall also be identified. Any proposed sub consultants shall be listed. Include sub consultants assigned task(s) and experience.

### **Section 4 Study Schedule**

City staff desires to have the Preliminary Report completed by February 25, 2021 and a Final Report completed by March 23, 2021. A Study schedule shall be included in the Proposal, and shall include all key milestones and deliverables. Assumptions used in developing the schedule and other potentially driving factors shall be identified.

### **Section 5 Staff Estimate and Cost**

Provide an estimate of staff time required for each scope item. Estimates shall be broken down by task to enable City staff to determine the level of detail and number of management staff and support personnel hours envisioned for each task. Estimates of hours for each staff classification shall be provided for each task.

Provide an hourly rate schedule for those job classifications to be billed to the Study and identify all other costs to be billed to the Study. Include total Study cost and identify any adjustments, which are predicted to occur during the life of the Study.

**Section 6       References**

Please provide a maximum of three (3) references of similar types of rate studies, design or other rate setting related Study's performed in the past 5 years. As a minimum, please include the client's name, Study name, Study description, total fee, contact name and title, address, phone number, fax number, and e-mail address.

**Section 7       Conflicts of Interest**

Firms submitting a proposal in response to this RFP must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm or other persons relative to the services to be provided under the Agreement for engineering services to be awarded pursuant to this RFP. If a firm has no conflicts of interest, a statement to that effect shall be included in the Proposal.

**Section 8       Proprietary Information**

Firms submitting a Proposal in response to this RFP must provide a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become the property of the City once submitted.

**Section 9       City Contract**

The City's form Professional Services Agreement will be used as the agreement between Consultant and City (Exhibit "A"). Please review and inform us in writing with your proposal of any changes required to the contract. Bidders must provide a summary of the firm's (and sub consultants) insurance coverage. Further, the summary should include a statement that the consultant and sub-consultant's insurance meets or exceeds the City's requirements.

**Section 10     Signature**

The proposal shall be signed by an official authorized to bind the consulting firm and shall expressly state that the proposal is valid for 90 days.

**SUMMARY OF KEY DATES;**

- Release of RFP..... November 19, 2020
- Proposals Due (4:00 p.m.) ..... December 14, 2020
- City Screening, Ranking and Selection..... December 15, 2020
- Contract Negotiations (Optional)..... December 16 - 18, 2020
- City Staff to City Council..... January 5, 2021
- NTP..... January 11, 2021
- Preliminary Report Due ..... February 25, 2021
- Present Preliminary Report to Council ..... March 2, 2021
- Final Report Due..... March 23, 2021
- Present Final Report to Council..... April 6, 2021

**INSURANCE REQUIREMENTS**

The consultant selected to perform the work shall furnish insurance as outlined in Section 11 of the form Professional Services Agreement attached as Exhibit “A”. Please refer to the attached insurance requirements.

**INDEMNIFICATION**

Consultant shall indemnify and defend the City of Lakeport/CLMSD Board and its officers, employees, and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney’s fees and other costs of defense incurred by City, whether for damage to or loss of property, or injury to or death of person, including properties of City and injury to or death of City officials, employees or agents, arising out of, or alleged to arise out of, or connection with Consultant’s operations hereunder or the performance of the work described herein, unless such damage, loss, injury or death is caused solely for the negligence of City.

**PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will not be held for this project. Consultants with questions regarding specific details of the project should submit them in writing to the Public Works Director no later than 3 business days prior to the due date of the proposals to allow adequate time for a written response to be generated and distributed to all proposers.

**ADMINISTRATIVE INFORMATION**

The City reserves the right to reject any or all proposals. This Request for Proposals does not obligate the City to award a contract nor does it commit the City to pay any costs associated with the preparation and submittal of a proposal. Requests for additional information required by a firm wishing to make a proposal to the City relative to this RFP shall be made in writing prior to the pre-proposal conference or in person at the pre-proposal conference. All proposals and accompanying materials shall become the property of the City of Lakeport upon submittal.

**PROPOSAL SUBMITTAL REQUIREMENTS**

Proposals shall be received by the City no later than 4:00 p.m. on December 14, 2020. Three copies of the proposal shall be submitted to:

City of Lakeport  
Attn: Hilary Britton, Deputy City Clerk  
225 Park Street  
Lakeport, CA. 95453

A cost proposal for the consultant’s services shall be provided in a separate sealed envelope with the consultant’s name on the outside; only one copy is required. The cost proposal should use the same format the consultant proposes to use for billing invoices.

**EVALUATION OF PROPOSALS TO ARRIVE AT A SELECTION**

**A. General**

The City of Lakeport Utilities Department complies with the City’s requirements concerning consultant selection as outlined in the City’s Consultant Selection Board Policy. Department staff will follow this set procedure in determining the best qualified consultant to perform the work solicited.

The items listed below are assigned relative weights which will be used to evaluate the written proposals and to arrive at a selection. At the option of the City, interviews may be used as a part of the selection process. The preliminary selection will be made by a Consultant Selection Committee.

The City will enter into negotiations with the firm receiving the highest rating following the selection. If such negotiations are not successful, negotiations will then be entered into with the firm receiving the next highest rating.

**B. Criteria for the Evaluation of Written Proposals**

The following evaluation criteria and weight of importance will be used in evaluating and selecting a consultant:

<b><u>Evaluation Criteria</u></b>	<b><u>Percentage Points</u></b>
1. Candidate’s specialized experience and technical competence as applicable to the services required. Resumes must be furnished for the key team members .....	30%
2. Candidate’s past record of performance, including control of costs, quality of work, completion in a timely manner .....	20%
3. Candidate’s capacity to perform the work in a timely fashion. A proposed work plan should be included .....	30%
4. Candidate’s familiarity with the type of problems applicable to the project .....	20%
5. Candidate’s proposed fees .....	0%

**EXHIBITS**

- A. Sample Professional Services Agreement

**DISCRETION AND LIABILITY WAIVER**

The City reserves the right to reject all proposals, or request and obtain, from one or more of the consulting firms submitting proposals, supplementary information as may be necessary for City staff to analyze the proposals pursuant to the consultant selection criteria contained herein.

The City may require consultants to participate in additional rounds of more refined submittals before a consultant is selected. These rounds could include revised submittal criteria in response to the nature and scope of the initial proposals. The City reserves the right to choose any number of qualified finalists.

The selected consultant will be required to execute the City's standard Professional Services Agreement, which is attached hereto as Exhibit "B".

**CONTACTS:**

All questions regarding this project should be directed in writing to:

City of Lakeport  
Attn: Paul Harris, Utilities Superintendent  
591 Martin Street  
Lakeport, CA. 95453

Phone: (707) 263-3578 Ext. 402  
Fax: (707) 263-1514  
Email: [pharris@cityoflakeport.com](mailto:pharris@cityoflakeport.com)

# Exhibit "A"

---

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

**1. IDENTIFICATION**

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

**2. RECITALS**

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

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

**3. DEFINITIONS**

- 3.1 “Scope of Services” means such professional services as are set forth in Consultant’s \_\_\_\_\_ **[insert consultant’s proposal date]** proposal to City attached hereto as “Exhibit A” and fully incorporated herein by this reference.
- 3.2 “Commencement Date” means \_\_\_\_\_ **[enter commencement date]**.
- 3.3 “Termination Date” means \_\_\_\_\_ **[enter termination date]**.
- 3.4 “City Agreement Administrator” means \_\_\_\_\_ **[enter name of City’s contact for purposes of Agreement]**.
- 3.5 “Consultant Project Administrator” means \_\_\_\_\_ **[enter name of Consultant’s contact for purposes of Agreement]**.

#### 4. TERM

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

#### 5. CONSULTANT’S SERVICES

- 5.1 Time is of the essence in Consultant’s performance of services under this Agreement.
- 5.2 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of [REDACTED] (\$ [REDACTED]) unless specifically approved in advance and in writing by City. Consultant shall notify the City Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum amount payable above. Consultant shall concurrently inform the City Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the maximum amount payable above.
- 5.3 Consultant shall perform all work to the highest standards of Consultant’s profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 Consultant represents that it has advised City in writing prior to the date of signing this Agreement of any known relationships with third parties, City Council Members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 5.5 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the

Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.

- 5.6 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. \_\_\_\_\_ *[enter name of Consultant's contact for purposes of Agreement]* shall be the Consultant Project Administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No other person shall serve as Consultant Project Administrator without City's prior written consent.
- 5.7 This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 5.8 Consultant shall be responsible to City for all services to be performed under this Agreement. All subconsultants shall be approved by the City Agreement Administrator and their billing rates identified in the Approved Fee Schedule, Exhibit A. City shall pay Consultant for work performed by its subconsultants (including labor) only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit A. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subconsultants.
- 5.9 Consultant shall notify the City Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subconsultant. Change of ownership or control of Consultant's firm may require an amendment to the Agreement.
- 5.10 This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Consultant acknowledges that prevailing wage determinations are available for the performance of inspection and survey work.

## **6. COMPENSATION**

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

## **7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

## **8. RELATIONSHIP OF PARTIES**

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

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

## **9. AGREEMENT ADMINISTRATOR**

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

## **10. INDEMNIFICATION**

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other expenses of litigation. Consultant shall not be

entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 of this Agreement and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 of this Agreement are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly waives its statutory immunity under such statutes as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in Section 10 of this Agreement from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.
- 10.7 In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

- 10.8 Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in CalPERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for CalPERS benefits.

## **11. INSURANCE**

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement.
- 11.2 Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to City as an Additional Insured as provided below. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.
- 11.3 Insurance required under this Agreement shall be of the types set forth below, with minimum coverage as described:
- 11.3.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 11.3.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.3.3 Worker's Compensation insurance if and as required by the laws of the State of California.
- 11.3.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

- 11.4 Consultant shall require each of its subconsultants to maintain insurance coverage that meets all of the requirements of this Agreement provided however, that the City Agreement Administrator may waive the provision of Errors and Omissions Insurance by subconsultants in his or her sole discretion.
- 11.5 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.6 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.7 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming City and its officers, employees, agents and volunteers as Additional Insureds. Prior to commencement of work under this Agreement, Consultant shall file with City's Risk Manager such certificate(s) and Forms CG 20 10 07 04 and CG 20 37 07 04 or the substantial equivalent showing City as an Additional Insured.
- 11.8 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.9 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as Additional Insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.10 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

- 11.11 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.12 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.13 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.
- 11.14 Consultant may be self-insured under the terms of this Agreement only with express written approval from the City.
  - 11.14.1 All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability.
  - 11.14.2 Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.
- 11.15 City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

## **12. MUTUAL COOPERATION**

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim, action, or proceeding is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim, action, or proceeding.

## **13. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

#### **14. RECORDS AND INSPECTIONS**

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

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

#### **15. PERMITS AND APPROVALS**

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

#### **16. NOTICES**

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

If to City:

[Name]

[title]

[Address]

[Address]

Telephone:

Facsimile:

If to Consultant:

[Name]

[Company]

[Address]

[Address]

Telephone:

Facsimile:

With courtesy copy to:

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

## 17. SURVIVING COVENANTS

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

## 18. TERMINATION

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

**19. GENERAL PROVISIONS** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

- 19.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 19.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 19.4. The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.
- 19.5. Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

- 19.6. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Lake County, California and Consultant hereby consents to jurisdiction in Lake County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.7. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 19.8. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.9. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the City and Consultant.
- 19.10. Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex

(including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training, Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

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

“City”

“Consultant”

*[insert name]*

By \_\_\_\_\_

By: \_\_\_\_\_

*[insert name], insert title]*

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

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

Attest:

By \_\_\_\_\_

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

Approved as to form:

By \_\_\_\_\_

David J. Ruderman, City Attorney

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