

# CITY OF LAKEPORT

*Over 100 years of community,  
pride, progress, and service*



January 11, 2022

## **CITY OF LAKEPORT, CALIFORNIA REQUEST FOR PROPOSALS SEWER CAPACITY STUDY**

**January 11, 2022**

### ***INTRODUCTION:***

The City of Lakeport is requesting proposals from qualified consultants to conduct a comprehensive sewer capacity analysis. The intent of the study is to independently assess and evaluate the City of Lakeport's existing sewer capacity.

### ***BACKGROUND:***

The City of Lakeport serves a population of approximately 5,000 residents with water and sewer services. There has been a recent uptick in potential developments of high-density housing. As a result, the city would like to determine the remaining capacity of our wastewater treatment plant to continue to operate effectively within our current permit requirements.

Our treatment facility consists of designed 1 MGD treatment plant that utilizes facultative ponds with aeration. Our current permit is .53 MGD due to constraints related to storage and disposal. Inflow and Infiltration of the collection system during the winter months creates a significant impact on capacity requirements.

There have been exceedances in constituents that also need to be considered and analyzed to determine the impact, if any, to additional flows.

## **SCOPE OF WORK**

### **A. OBJECTIVE:**

The objective of the study is to adequately determine the remaining capacity of our wastewater treatment plant.

1. A determination of a Residential Unit Equivalent (RUE) based on industry standards utilizing water consumption records vs. number of connections.
2. A determination of the remaining RUE capacity of the WWTP by volume and plant performance.

### **B. SERVICES TO BE PROVIDED BY CONSULTANT**

1. Conduct a detailed analysis of current capacity by determining an accurate RUE (residential unit equivalent) and establish remaining capacity of the WWTP. This will include evaluating performance over the past 3 years and related exceedances of BOD, Nitrate (as N) and Total Coliform that may be affected by increased flows.
2. Provide operational and/or capital improvement recommendations that might mitigate these exceedance events.
3. Meet or confer with staff as needed.
4. Preliminary Report:
  - a. Prepare a preliminary report.
  - b. Incorporate changes pursuant to comments received by Lakeport staff.
5. Draft Final Report
  - a. Provide a draft final report.
  - b. Incorporate changes pursuant to comments received by Lakeport staff.
6. Final Report
  - a. Provide final report no later than June 30<sup>th</sup>.
  - b. Incorporate changes pursuant to comments received by Lakeport staff.
  - c. Submit 4 spiral bound copies.
  - d. Provide an electronic version with report in MS Word format, with spreadsheets in Excel format.
7. Supply a time schedule for developing the preliminary and final reports.

### **C. 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 relevant to the project.
2. Provide an electronic copy of the Water and Sewer System's Master Plan prepared in 2008.
3. Provide staff support and assistance as required and agreed to in advance of the study.

4. Provide comments within 10 working days from date received.

## **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.

### **Section 1 Cover Letter - Study Overview**

Provide a narrative description of the Study based on the Scope of Work presented in the Request for Proposal (RFP). District staff will assess the Consultant's understanding of all aspects of the Study based on the overview. Include statements as indicated in following sections.

### **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 District 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**

District staff desires to have the Final Report completed by June 30, 2022. A Study schedule shall be included in the Proposal. Show all key Study 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 District 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 capacity studies, design or other 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 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 District once submitted.

**Section 9 District Contract**

A District standard consulting contract form will be used as the agreement between Consultant and District (Exhibit A). Please provide a statement of your firm’s agreement to sign the contract as is with no changes, if selected. Please note the Insurance Requirements in section 11. Provide a statement that the consultant and sub-consultant’s insurance will meet or exceed the District’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..... Jan 13, 2022
- Last Day for Questions (5:00 p.m.)..... Feb 1, 2022
- Proposals Due (4:00 p.m.)..... Feb 9, 2022
- Selection of Consultant..... Feb 10, 2022
- Contract Negotiations (Optional)..... Feb 14-16, 2022
- Utilities Super recommends to City Council..... Mar 1, 2022
- Work begins..... Mar 14, 2022

## **INSURANCE REQUIREMENTS**

The consultant selected to perform the work shall furnish insurance as outlined on the attached Exhibit "A". Please refer to the attached insurance requirements.

## **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 Utilities Superintendent ([pharris@cityoflakeport.com](mailto:pharris@cityoflakeport.com)). All questions are due by Feb. 1, 2022, no later than 5 pm. A written response to be generated and distributed to all proposers.

## **PAYMENT TERMS**

The negotiated contract will be lump sum.

## **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 as indicated above. 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 February 9, 2022. Six copies of the proposal shall be mailed or submitted to:

City of Lakeport  
Attn: Hilary Britton, City Clerk  
225 Park Street  
Lakeport, CA. 95453  
Clearly mark envelope "Sewer Capacity Study".

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

### **General**

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.

**A. 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.....	20%
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 .....	20%
4. Candidate's familiarity with the type of problems applicable to the project .....	20%
5. Candidate's proposed fees .....	20%

**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 the ultimate selections of a consulting team are made. These rounds could encompass revisions of the 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 included herein.

**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  
Email: [pharris@cityoflakeport.com](mailto:pharris@cityoflakeport.com)

# Exhibit A

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# CITY OF LAKEPORT

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January 11, 2022

## PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

(City of Lakeport / [**Company or Individual**])

### 1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Lakeport, a California municipal corporation (“City”), and \_\_\_\_\_, a \_\_\_\_\_ (“Consultant”).

### 2. RECITALS

- 2.1. City has determined that it requires the following professional services from a consultant: [**enter 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.
- 2.3. Consultant represents that it has no 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.

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

### 3. DEFINITIONS

- 3.1. “Design Professional”: A Design Professional is any individual satisfying one or more of the following: (1) licensed as an architect pursuant to Business and

Professions Code 5500 et seq., (2) licensed as a landscape architect pursuant to Business and Professions Code 5615 et seq., (3) licensed as a professional land surveyor pursuant to Business and Professions Code 8700 et seq., or (4) registered as a professional engineer pursuant to Business and Professions Code 6700 et seq.

- 3.2. “Scope of Services”: Such professional services as are set forth in Consultant’s [enter consultant’s proposal date] proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.3. “Agreement Administrator”: The Agreement Administrator for this project is [Name and title]. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant
- 3.4. “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.5. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is [redacted] Dollars (\$ [redacted]).
- 3.6. “Commencement Date”: [date].
- 3.7. “Termination Date”: [date].

#### 4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 18 (“Termination”) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

#### 5. CONSULTANT’S DUTIES

- 5.1. **Services.** 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.

- 5.2. Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the 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.
- 5.4. Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. Professional Standards.** Consultant shall perform all work to the standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. Avoid Conflicts.** 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 such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.7. Appropriate Personnel.** Consultant 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. [Name of Project Manager] shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.8. Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City

and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.

- 5.9. 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.
- 5.10. Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.11. Records.** 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. 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 this Agreement.

## 6. SUBCONTRACTING

- 6.1. General Prohibition.** 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.
- 6.2. Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.

## 7. COMPENSATION

- 7.1. General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, 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 or 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.
- 7.3. Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

## 8. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section

16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects including the design and preconstruction phases of a covered public works project. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

## **9. 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.

## **10. RELATIONSHIP OF PARTIES**

- 10.1. General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. No Agent Authority.** 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.
- 10.3. Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an 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, and workers’ compensation, and other applicable federal and state taxes.
- 10.4. Indemnification of CalPERS Determination.** 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.

## **11. INDEMNIFICATION**

- 11.1 **Definitions.** For purposes of this Section 11, “Consultant” shall include Consultant, 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. “City” shall include City, its officials, officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold harmless, the City, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that actually or allegedly arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this contract, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the City, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the City, then Consultant’s indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant’s proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the City, its officers, officials, employees and volunteers.

- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole negligence, active negligence or willful misconduct of the City. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 11.4 **Attorneys' Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees 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.
- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 11.9 **Civil Code.** The parties are aware of the provisions of Civil Code 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this Section 11 complies therewith.

## 12. INSURANCE

- 12.1. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or



decrease any liability of Consultant. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

**12.2. Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Consultant shall file with City:

- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: [insert project name]
- Documentation of Best's rating acceptable to the City.
- Original endorsements effecting coverage for all policies required by this Agreement.
- Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

**12.3. Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance: \$2,000,000 per occurrence,  
\$4,000,000 aggregate
- General Liability:
  - General Aggregate: \$4,000,000
  - Products Comp/Op Aggregate \$4,000,000
  - Personal & Advertising Injury \$2,000,000
  - Each Occurrence \$2,000,000
  - Fire Damage (any one fire) \$ 100,000
  - Medical Expense (any 1 person) \$ 10,000
- Workers' Compensation:
  - Workers' Compensation Statutory Limits
  - EL Each Accident \$1,000,000
  - EL Disease – Policy Limit \$1,000,000
  - EL Disease – Each Employee \$1,000,000
- Automobile Liability
  - Any vehicle, combined single limit \$1,000,000

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the City as additional insured. 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

- 12.4. General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- 12.5. Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 12.6. Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 12.7. Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- 12.8. Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. 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 contract work.
- 12.9. Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of Lakeport must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers,

agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using 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.

- 12.10. Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.
- 12.11. Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance 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. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Lakeport, Attn: [insert department or individual], 225 Park Street, Lakeport, California 95453.
- 12.12. Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any 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.
- 12.13. Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.15. Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related

investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement. City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.

**12.16. Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

### 13. MUTUAL COOPERATION

**13.1. City Cooperation in Performance.** 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.

**13.2. Consultant Cooperation in Defense of Claims.** If any claim or action 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 or action.

### 14. 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]  
City of Lakeport  
[Department/Division]  
225 Park Street  
Lakeport, CA 95453  
Telephone: (707) 263-5615  
Facsimile: (707) 263-8584

If to Consultant

[Name]  
[Address]  
[Address]  
Telephone:  
Facsimile:

With courtesy copy to:

David J. Ruderman, Esq.

Lakeport City Attorney  
Colantuono, Highsmith & Whatley, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945  
Telephone: (530) 432-7357  
Facsimile: (530) 432-7356

## 15. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.11 (Records), paragraph 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnity), paragraph 12.8 (Claims-Made Policies), paragraph 13.2 (Consultant Cooperation in Defense of Claims), and paragraph 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

## 16. TERMINATION

- 16.1. City Termination.** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. 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 returned to City upon the termination or expiration of this Agreement.
- 16.2. Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 16.3. Compensation Following Termination.** Upon termination, 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. The City shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.4. Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## 17. INTERPRETATION OF AGREEMENT

- 17.1. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and

the provisions 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 by City and Consultant.

- 17.3. Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and 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 language of the section or paragraph shall control and govern in the construction of this Agreement.
- 17.4. Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. Severability.** 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 shall be enforceable in its amended form. 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, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 17.6. No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

## **18. GENERAL PROVISIONS**

- 18.1. Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- 18.2. Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement.

Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 18.3. Non-assignment.** Both parties shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the other party'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.
- 18.4. Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.6. Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. Non-Discrimination.** 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. Employment actions to which this provision applies 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.
- 18.8. Waiver.** No provision, 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 asserted to have consented to the waiver. The

waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.

- 18.9. Excused Failure to Perform.** 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.
- 18.10. Remedies Non-Exclusive.** 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.
- 18.11. Attorneys' Fees.** In the event of a dispute arising out of the terms of this Agreement, including any action brought to declare the rights granted herein or to enforce any of the terms of this Agreement, the party prevailing in such dispute shall be entitled to all reasonable costs and litigation expenses actually incurred, including fees of attorneys and expert witnesses.
- 18.12. Venue.** 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.
- 18.13. Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.



**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”  
City of Lakeport

“Consultant”  
[Name of Company or Individual]

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Attest:**

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
Kelly Buendia, City Clerk

Printed: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**Approved as to form:**

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

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