

CITY OF GUSTINE

County of Merced
State of California



REQUEST FOR PROPOSAL

for

COMMUNITY DEVELOPMENT BLOCK GRANT

GRANT ADMINISTRATION SERVICES

November 1, 2016

Proposals Due by:

NOVEMBER 28, 2016

TABLE OF CONTENTS

	Page
INTRODUCTION	1
REQUEST FOR PROPOSALS	1
SCOPE OF WORK.....	3
SUBMITTAL OF PROPOSALS	5
METHOD AND CRITERIA FOR SELECTION	5
DISPUTES RELATING TO PROPOSAL PROCESS	7
CONTRACT TERMINATION/DEBARMENT	7
INSURANCE REQUIREMENTS.....	7
CONFLICT OF INTEREST	8
ASSIGNMENT	8
FEDERAL TERMS AND CONDITIONS	8
AFFIRMATIVE ACTION:	8
SECTION 3:.....	8
NON-DISCRIMINATION CLAUSE:.....	9
EQUAL OPPORTUNITY:	9
CONFLICT OF INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF CONTRACTORS, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS:	12
DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE FEDERAL REGULATORY REQUIREMENTS UNDER 24 CFR 85.36(E):	12
COPELAND “ANTI-KICKBACK” ACT (18 U.S.C 874).....	13
COMPLIANCE WITH ALL FEDERAL LABOR STANDARD PROVISIONS:.....	13
COMPLIANCE WITH SECTIONS 103 AND 107 OF THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-330).....	13
REQUIREMENTS AND REGULATIONS PERTAINING TO DATA AND DESIGN:	13
REQUIREMENTS AND REGULATIONS PERTAINING TO REPORTING:	13
COMPLIANCE WITH CLEAN AIR ACT AND CLEAN WATER ACT:.....	13
COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT	14
D/MBE/WBE IMPLEMENTATION GUIDELINES:	14
AUDIT, RETENTION AND INSPECTION OF RECORDS:	15
ATTACHMENT A, TEMPLATE PROFESSIONAL SERVICES AGREEMENT:.....	16

**COMMUNITY DEVELOPMENT BLOCK GRANT
CONSULTANT FIRMS TO PROVIDE
Grant Administration Services**

Introduction

The City of Gustine is requesting proposals from qualified CONSULTANT firms to provide grant administration services for a State of California Community Development Block Grant (CDBG) Program. Qualified CONSULTANT's must have extensive experience working with the CDBG Program. The City of Gustine is seeking grant administration services to submit and complete a supplemental activity using CDBG program income for rehabbing an existing senior and community center.

Activity Title	Description
Al Goman Community and Senior Center Rehabilitation	The City of Gustine is seeking a qualified consultant to provide grant administration services to submit/complete a supplemental activity using existing CDBG program income.

Request for Proposals

The City of Gustine is seeking a CONSULTANT to provide services to the City for the administration and implementation of the identified projects listed above. The response to the "Request for Proposals" must be made according to the requirements set forth in this RFP. Failure to adhere to these requirements or to include conditions, limitations or misrepresentations may be cause for rejection of the submittal.

CONSULTANT's proposal shall include all oversight, documentation, coordination, consultation, meetings, reviews, etc. as necessary to comply with federal CDBG requirements for the design, planning and construction project identified above. This shall include, but is not limited to the following:

- A. A brief history and detailed summary of your firm's qualifications and specific experience;
- B. A statement of your firm's policy regarding affirmative action, and indication if your firm is a small business and/or minority or woman owned business.

- C. Experience of firm and individual team members as it pertains to CDBG grant funded project contract and grant administration and implementation, including CDBG funding.
- D. List of similar work performed by the firm, including location and type of project. The City may contact past clients for references. Provide the name and telephone number of a reference for each project listed;
 - 1. A description of the proposed scope of work and methodology.
- E. A proposed schedule;
- F. For each activity (i.e. do not provide a lump sum for all activities), provide a description of proposed costs including:
 - 1. Provide the hourly rate for each project team member who would be assigned to this project and the estimated number of hours required for each task.
 - 2. Indicate other expenses that are requested to be reimbursed.
 - 3. CONSULTANT shall identify any personnel and overhead costs associated with periods of project inactivity or delay.
- G. Organizational chart applicable to this project identifying the project manager, key personnel, and supporting staff. Specific responsibilities of each person should be detailed;
- H. Knowledge of the City of Gustine (list any previous experience with the City);
- I. Acknowledgement that the standard professional services agreement for the City of Gustine (see Attachment A for the sample) is acceptable as presented or as amended (include the proposed amendments).

Scope of Work

The Scope of Work to be performed by the CONSULTANT shall include the following activities:

- A. CONSULTANT shall ensure proper completion and submission of all financial and performance reports required by the program (e.g., monthly, quarterly, annual, close-out, etc.).
- B. CONSULTANT shall be present at all appropriate public meetings if requested.
- C. CONSULTANT shall ensure that the proper administrative files are maintained.
- D. CONSULTANT shall establish and maintain administrative files. This includes maintaining the required Public Information Binder.
- E. CONSULTANT will, as requested, directly participate in any monitoring by the State or other agencies and provide the necessary documents and files for such monitoring visits. CONSULTANT will advocate on City's behalf, to the maximum extent appropriate, and respond to and correct any monitoring findings under control of the CONSULTANT.
- F. CONSULTANT shall prepare a close-out manual to guide the City after the project has been completed. Such guide will outline the City's ongoing program responsibilities.
- G. CONSULTANT shall monitor program milestones and recommend amendments as necessary.
- H. CONSULTANT shall facilitate communications between all State-CDBG personnel and the City.
- I. CONSULTANT shall appraise the City of all applicable federal and State requirements related to the funds and facilitate the meeting of such requirements.
- J. CONSULTANT shall serve as the primary contact person for issues related to labor standards. The CONSULTANT shall attend the preconstruction conference to provide the contractor and subcontractor(s) with contractor labor compliance handouts and review the applicable labor standards requirements as required by Federal/State and State CDBG Program requirements.
- K. CONSULTANT shall obtain applicable State and federal wage rate decisions as determined by the Department of Industrial Relations (DIR) and the Davis Bacon Act. The CONSULTANT shall determine the appropriate wage rate determination for each class of employee prior to preparation of bid/proposal requests by the City. CONSULTANT shall update wage rate determinations prior to award of contracts as required by law. CONSULTANT is to provide these rates in a binder for the Prime Contractor to post at the jobsite.

- L. CONSULTANT shall verify contractor and subcontractor(s) eligibility through the State Contractor's Licensing Board and Federal debarred list. CONSULTANT is to keep all information neat and orderly in each individual contractor/subcontractor files.
- M. CONSULTANT shall provide contractors and subcontractors with required certification statements and contract language requirements.
- N. CONSULTANT shall assist in processing contractor/CONSULTANT invoices and change orders.
- O. CONSULTANT shall assist in processing Request for Information as it relates to labor standards.
- P. CONSULTANT shall conduct labor standards reviews sufficient to ensure compliance with applicable DIR and Davis Bacon regulations. Reviews shall include on site interviews with a minimum of 10% of employees of each trade.
- Q. CONSULTANT shall verify DIR apprenticeship requirements and proper outreach required (DAS forms).
- R. CONSULTANT shall verify Contractor/Subcontractors Fringe Benefit Statements.
- S. CONSULTANT shall promptly review payroll for compliance with applicable labor standards. CONSULTANT is to have a cover sheet on each certified payroll, showing period ending date, certified payroll #, date reviewed, and signature of CONSULTANT reviewing payroll. There should be an area for notes if there are any discrepancies.
- T. CONSULTANT shall prepare the applicable level of NEPA and CEQA environmental clearance on behalf of the City, including but not limited to, the Statutory Worksheet and Environmental Assessment as required.
- U. CONSULTANT shall prepare all documents required by the CDBG Program for the CITY to receive the Authority to Use Grant Funds from the State CDBG Program.
- V. CONSULTANT shall ensure that required documents are submitted in a timely manner.

Submittal of Proposals

Three copies of the Proposals shall be submitted by 5 p.m. on November 28th either in person or by mail to the following address:

City of Gustine

Attention: Sean Scully, City Manager

352 Fifth St

Gustine, CA 95322

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

It is understood and agreed that the Proposer claims no proprietary rights to the ideas and written materials contained in or attached to its proposal. Proposals will be maintained as confidential until recommendation is submitted to the City Council at which time all proposals will be public record.

Proposers warrant and covenant that no official or employee of the City, or any business entity in which an official of the City has an interest, has been employed or retained to solicit or aid in the procuring of the contract of this project.

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

CONSULTANT shall not employ discriminatory practices in the treatment of persons in relation to the circumstances provided for herein, including assignment of accommodations, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

Method and Criteria for Selection

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

- A. The proposal is complete and is in compliance with the RFP.

- B. Prospective firm agrees to meet, by including of such statement in submittal letter, all State and Federal requirements included in this RFP.

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

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

Cost, while an important factor, will not be the sole determining factor. The contract will be awarded to the proposer who submits the most favorable overall proposal, as determined by the City in its sole discretion, and may be awarded to other than the lowest proposer. Proposals will be evaluated based on the following criteria:

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

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

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

After selection of the CONSULTANT, all applicants will be notified of the City's decision.

Disputes Relating to Proposal Process

Proposer may protest a contract award if the Proposer believes that the award was inconsistent with City policy or this RFP is not in compliance with law. A protest must be filed in writing with the City (email is not acceptable) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 5 p.m. of the fifth business day after notification of the contract award will be rejected by the City as invalid and the Proposer's failure to timely file a protest will waive the Proposer's right to protest the contract award. The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

The City will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. The City shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by the City relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

Contract Termination/Debarment

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

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

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

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

Insurance Requirements

See Attachment A, Professional Services Agreement.

Conflict of Interest

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or RFP with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purpose of this section.

Assignment

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

Federal Terms and Conditions

During the performance of the contract, the Contractor must agree to comply with all applicable Federal laws and regulations including but not limited to the following:

AFFIRMATIVE ACTION:

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the United States Department of Housing and Urban Development (HUD) and subject to 24 CFR 85.36(e). City hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award. Minority and women-owned and operated businesses are encouraged to apply.

SECTION 3:

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the HUD, Community Development Block Grant Program, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the project area and that the contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by

persons residing in the area of the project. Regulations for implementing the Section 3 clause are contained in 24 CFR 135, as amended, and as specified in the project specifications.

NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

EQUAL OPPORTUNITY:

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

1. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
2. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City Setting forth the provisions of this nondiscrimination clause.

3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will *be* binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
9. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
10. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
11. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

12. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

CONFLICT OF INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF CONTRACTORS, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS:

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

INSURANCE: Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE FEDERAL REGULATORY REQUIREMENTS UNDER 24 CFR 85.36(e):

The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

1. Affirmative steps shall include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

- v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

COPELAND “ANTI-KICKBACK” ACT (18 U.S.C. 874):

Contractor shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

COMPLIANCE WITH ALL FEDERAL LABOR STANDARD PROVISIONS:

Contractor shall comply with all provisions contained in the form HUD-4010, Federal Labor Standards Provisions.

COMPLIANCE WITH SECTIONS 103 AND 107 OF THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-330):

Contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR part 5, Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

REQUIREMENTS AND REGULATIONS PERTAINING TO DATA AND DESIGN:

All data and design and engineering work created under this Agreement shall be owned by the City and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the City.

REQUIREMENTS AND REGULATIONS PERTAINING TO REPORTING:

The City, State CDBG, HUD and the Comptroller General of the United States or any of their duly authorized representatives shall be granted access to any books, documents, papers and records of Contractor which are directly pertinent the contract.

COMPLIANCE WITH CLEAN AIR ACT AND CLEAN WATER ACT:

Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).

1. Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).
2. Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15).

COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT (Pub. L. 94-163, 89 Stat. 871):

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163,89 Stat. 871).

D/MBE/WBE IMPLEMENTATION GUIDELINES:

The following information, as applicable, shall be retained by Contractor and produced upon request by General Services if determined by General Services to be necessary to establish the bidder's "good faith efforts" to meet the Disadvantaged/Minority/Women Business Enterprise (D/M/WBE) requirements.

1. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for D/M/VVBE participation for this project was placed by the bidder.
2. The names and dates of notices of all certified D/M/WBEs solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the D/M/WBEs were interested.
3. The items of work for which the bidder requested subbids or materials to be supplied by D/M/WBEs, the information furnished interested D/M/WBEs in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate D/M/WBE participation. Where there are D/M/WBEs available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for D/M/WBEs to bid on.
4. The names of D/M/WBEs who submitted bids for any of the work indicated in (3) above, which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting the D/M/WBE bid was price, give the price bid by the rejected D/M/WBE and the price bid by the selected subcontractor or supplier.
5. Assistance that the bidder has extended to D/M/WBEs identified in (4) above to remedy the deficiency in their sub-bids.
6. To find a D/M/VVBE certified firm, you may call (916) 445-3520, go on-line to: <http://www.dot.ca.gov/hq/bep>, or via mail at: D/M/WBE Listing for County, CalTrans Publications Distribution Unit, 1900 Royal Oaks, Sacramento, CA 95815-3800.

AUDIT, RETENTION AND INSPECTION OF RECORDS:

The Contractor agrees that the (City/County), the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Contractor agrees to provide any relevant information requested and shall permit the (City/County), the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq.

The Contractor further agrees to maintain such records for a period of five (5) years after final payment under this Agreement, and that on or before the end of the five (5) year audit/retention period, the CONSULTANT shall release and deliver to the (City/County) all original records and related documentation.

ATTACHMENT A

**CITY OF GUSTINE
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____, 20____ by and between the City of Gustine, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 352 Fifth Street, Gustine, California (“City”), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

(hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit “A.” **[Alternatively, Scope of Services can be included here and all subsequent exhibits renumbered accordingly.]**

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit “B.” **[Alternatively, Schedule of Charges may be included here and all subsequent exhibits renumbered accordingly.]**

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$_____ **[Insert amount of compensation]**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder within **[Insert number of calendar days for performance of the services – if more detail is required attach "Activity Schedule" as Exhibit C, otherwise delete Exhibit C.]** The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted

- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the

period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

b. Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its officials, officers,

employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse the City, its officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents and volunteers.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

[Delete the following provision and renumber all further provisions, if not applicable.]

15. City Material Requirements.

Consultant is hereby made aware of the City's requirements regarding materials, as set forth in **[Insert the name of the document that contains the City's standard material requirements]**, which are deemed to be a part of this Agreement.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Merced, State of California.

17. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign [REDACTED] as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

CONSULTANT:

City of Gustine
352 Fifth Street
Gustine, CA 95322

INSERT NAME, ADDRESS & CONTACT PERSON

Attn: ***INSERT NAME & DEPARTMENT***

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

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. 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 director, official, 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.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GUSTINE
AND [***INSERT NAME***]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF GUSTINE

[INSERT NAME OF CONSULTANT]

By: _____
[INSERT NAME]
[INSERT TITLE]

By: _____

Its: _____

Printed Name: _____

ATTEST:

By: _____
City Clerk

EXHIBIT A
Scope of Services

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

EXHIBIT C
Activity Schedule