

## TOWN OF PARADISE – DRAFT AGREEMENT FOR PROFESSIONAL SERVICES

Hawkins Delafield & Wood LLP  
Consultant

Legal Services for the Paradise Sewer Project  
Project Title

9394  
Budget Account Number

### **ARTICLE I INTRODUCTION**

This AGREEMENT is between Town of Paradise (Town) and the following named, hereinafter referred to as, CONSULTANT:

Hawkins Delafield & Wood LLP, who is qualified to do business in California.

The Project Manager for the CONSULTANT will be Eric J. Sapir (also known as Rick Sapir).

The Contract Administrator for the Town of Paradise will be Marc Mattox, Public Works Director/Town Engineer.

- A. Consultant shall perform the work under this AGREEMENT described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal, per *Exhibit B – Compensation*. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- B. Indemnity and Defense
  - 1. Indemnity

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless Town and any and all of its officials, employees and agents as well as any other entities specified by Town ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify and hold harmless the Town of Paradise shall not extend to the Town's sole or active negligence. The provisions of this paragraph 1 shall not apply to claims based upon professional malpractice.

- 2. Duty to Defend

Notwithstanding the limits of any insurance, in the event the Town of Paradise, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by the Town of Paradise, CONSULTANT shall defend the Town of Paradise at CONSULTANT's cost or at the Town of Paradise's option, to reimburse the Town of Paradise for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by the Town of Paradise is not a

condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and the Town of Paradise, as to whether liability arises from the sole or active negligence of the Town of Paradise or its officers, employees, or agents, CONSULTANT will be obligated to pay for the Town of Paradise's defense until such time as a final judgment has been entered adjudicating the Town of Paradise as solely or actively negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation. The provisions of this paragraph 2 shall not apply to claims based upon professional malpractice.

### 3. Indemnification and Duty to Defend – Professional Malpractice

In the event that the Town of Paradise determines Town of Paradise may have been injured by professional malpractice on the part of CONSULTANT, the Town of Paradise shall notify the CONSULTANT in writing of the malpractice alleged and extent of injury. CONSULTANT shall respond to such notification within ten (10) working days. If the matter cannot be resolved between the Town of Paradise and the Consultant within 60 days, the City may initiate litigation to recover its damages as well as costs of collection.

CONSULTANT's responsibility for professional liability coverage lies with the Town of Paradise, and not with third parties. Therefore, in the event that a third party brings a claim or cause of action against the Town of Paradise alleging or based upon CONSULTANT's professional malpractice, the CONSULTANT shall indemnify the Town of Paradise for any damage proximately caused by its professional malpractice, but shall not defend the Town of Paradise.

### 4. Comparative Fault

CONSULTANT shall neither indemnify nor defend the Town of Paradise where or to the extent such damage is the result of the negligence or willful misconduct of the Town of Paradise.

- C. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor, and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of Town.
- D. The Town of Paradise is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the Town of Paradise as to the designation of tasks to be performed and the results to be accomplished.
- E. Any third-party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds the Town of Paradise harmless from any and all claims that may be made against the Town based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- F. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior

written approval of the Town of Paradise. However, claims for money due or which become due to CONSULTANT from Town under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the Town of Paradise. If a specific Project Manager or Coordinator is assigned to be the lead under this Agreement, CONSULTANT shall notify the Town of Paradise immediately if such person is planning to or leaves CONSULTANT'S employ, which may be the basis for termination of this Agreement.

- G. CONSULTANT shall be as fully responsible to the Town of Paradise for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- H. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. No waiver of any term or condition of this Agreement shall be a continuing waiver thereof.
- I. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided in writing.
- J. CONSULTANT shall comply with the provisions of this agreement and additional federal provisions in Exhibit E of this agreement. In the event of a conflict between any provisions of Exhibit E, the more stringent provisions shall control and prevail.
- K. CONSULTANT shall comply with the requirements of State prevailing wage law as required by law and as set out in this AGREEMENT.
- L. All days set out herein are calendar days unless otherwise specified.

## **ARTICLE II CONSULTANT'S REPORTS OR MEETINGS**

CONSULTANT's Project Manager shall meet with the Town of Paradise's Contract Administrator or Project Coordinator, as needed and upon request of the Contract Administrator, to discuss progress on the project(s).

## **ARTICLE III STATEMENT OF WORK**

CONSULTANT shall provide On-Call Owner's Agent services for the Paradise Sewer Project, described in Exhibit A entitled "SCOPE OF SERVICES" attached and incorporated as if full set forth.

## **ARTICLE IV PERFORMANCE PERIOD**

- A. Exhibit C is the "SCHEDULE OF PERFORMANCES" and is attached and incorporated. This AGREEMENT shall go into effect on **8/14/23**, contingent upon approval by the Town of Paradise, and CONSULTANT shall commence work after notification to proceed by the Town of Paradise's Contract Administrator. The AGREEMENT shall end on December 31, 2028, unless extended by AGREEMENT amendment or terminated under Article VI of this AGREEMENT.

- B. No recommendation for AGREEMENT award is binding on the Town of Paradise until the AGREEMENT is fully executed and approved by Town Council of the Town of Paradise and the Contract Administrator has issued a notice to proceed.

#### **ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

- A. The method of payment for this AGREEMENT will be based on cost reimbursement. The Town of Paradise will reimburse CONSULTANT for actual costs (including labor costs, travel, equipment rental costs, and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, travel, equipment rental, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In the event, that the Town of Paradise determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or costs reimbursable by the Town of Paradise shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "G" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.
- B. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- C. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- D. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, the Town of Paradise shall have the right to delay payment or terminate this AGREEMENT.
- E. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- F. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by the Town of Paradise's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due the Town of Paradise including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to the Town of Paradise's Contract Administrator at the following address:

Marc A. Mattox, Public Works Director/Town Engineer  
Town of Paradise  
5555 Skyway  
Paradise, CA 95969

- G. The total amount payable by the Town of Paradise shall not exceed \$620,000.
- H. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

#### **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by the Town of Paradise, provided that the Town of Paradise gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, the Town of Paradise shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not. Notwithstanding, this AGREEMENT may be terminated immediately by Town based upon public health, safety or welfare risks.
- B. The Town of Paradise may temporarily suspend this AGREEMENT, at no additional cost to the Town of Paradise, provided that CONSULTANT is given written notice (delivered in person, by email with a received receipt or by certified mail, return receipt requested) of temporary suspension. If the Town of Paradise gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to the Town of Paradise for damages sustained by Town by virtue of any breach of this AGREEMENT by CONSULTANT, and Town may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due Town from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT for all correctly completed work. Upon termination, the Town of Paradise shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to the Town of Paradise.
- D. When a CONSULTANT or subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

## **ARTICLE VIII RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, subconsultants, and the Town of Paradise shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. The Town of Paradise, HCD, HUD, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

## **ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by the Town of Paradise's Finance Director.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by the Town of Paradise's Finance Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the Town of Paradise will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review, it is CONSULTANT's responsibility to ensure federal, the Town of Paradise, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by the Town of Paradise Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by the Town of Paradise at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state, or Town of Paradise have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

## **ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the Town of Paradise and any subconsultants, and no sub agreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the Town of Paradise for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed

by the CONSULTANT. The CONSULTANT's obligation to pay its subconsultants is an independent obligation from the Town of Paradise's obligation to make payments to the CONSULTANT.

- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the Town of Paradise's Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any sub agreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the Town of Paradise.
- E. Any substitution of subconsultants must be approved in writing by the Town of Paradise Contract Administrator in advance of assigning work to a substitute subconsultant.

#### **ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

- A. Prior authorization in writing by the Town of Paradise's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by the Town of Paradise's Contract Administrator, three competitive quotations shall be submitted with the request, or the absence of bidding shall be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
  - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, the Town of Paradise shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit the Town of Paradise in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Town of Paradise procedures; and credit the Town of Paradise in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the Town of Paradise and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the Town of Paradise.
  - 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

## **ARTICLE XII CONFLICT OF INTEREST**

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with the Town of Paradise that may have an impact upon the outcome of this AGREEMENT or any ensuing Town of Paradise construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing Town of Paradise construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to the Town of Paradise any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise the Town of Paradise of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either the Town of Paradise ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any consultant affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated consultant is one, which is subject to the control of the same persons, through joint ownership or otherwise.
- E. Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the CONSULTANT, or its designee or agents, may obtain a financial interest or benefit from a CDBG-DR assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to CDBG-DR assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for 1 year thereafter.

## **ARTICLE XIII REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any Town of Paradise employee. For breach or violation of this warranty, the Town of Paradise shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## **ARTICLE XIV PROHIBITION OF EXPENDING TOWN OF PARADISE, STATE, OR FEDERAL FUNDS FOR LOBBYING**

- A. The CONSULTANT certifies, to the best of his, her or its knowledge and belief, that:
  - 1. No State, Federal, or Town of Paradise appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this

AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
  - C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier sub agreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

#### **ARTICLE XV NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by the Town of Paradise to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the Town of Paradise upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the Town of Paradise shall require ascertaining compliance with this clause.

- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs (Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 41 CFR §60-1.4, including employment practices and the selection and retention of subconsultants. The equal opportunity clause is listed in 41 CFR §60-1.4 is included by reference in this AGREEMENT.

#### **ARTICLE XVI DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending;
  - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years; and
  - 5. Has not been suspended or debarred from participating or receiving federal government contracts, subcontracts, loans, grants, or other assistance programs.
- B. Any exceptions to this certification must be disclosed to the Town of Paradise. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by HUD.

## **ARTICLE XVIII INSURANCE**

Consultant shall provide Insurance as described in Exhibit D entitled "INSURANCE REQUIREMENTS".

- A. Prior to Agreement execution, CONSULTANT shall furnish the Town of Paradise with a Certificate of Insurance evidencing the insurance types and requirements set forth in Exhibit D.
- B. That the Town of Paradise will not be responsible for any premiums or assessments on the policy.
- C. The required insurance listed in Exhibit D shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the Town of Paradise. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, the Town of Paradise may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

## **ARTICLE XIX FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to the Town of Paradise for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or the Town of Paradise governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. The Town of Paradise has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

## **ARTICLE XX CHANGE IN TERMS**

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the Town of Paradise's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by the Town of Paradise's Contract Administrator.

## **ARTICLE XXI CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the Town of Paradise has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

## **ARTICLE XXII DISPUTES**

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of the Town of Paradise's Contract Administrator and the Town Manager, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by the Town of Paradise's Town Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

## **ARTICLE XXIII INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit the Town of Paradise, the State, and the HUD to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

## **ARTICLE XXIV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by the Town of Paradise's Safety Officer and other Town of Paradise representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, the Town of Paradise has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- C. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

#### **ARTICLE XXV OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of Town, and CONSULTANT shall have no property right there in whatsoever. Immediately upon termination, Town shall be entitled to, and CONSULTANT shall deliver to Town, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to Town which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by Town.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of Town without restriction or limitation upon its use or dissemination by Town.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by Town for another project or project location shall be at Town's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 – Patent Rights under Government Contracts for federal-aid contracts).
- E. The Town of Paradise may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the HUD shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

#### **ARTICLE XXVI CLAIMS FILED BY THE TOWN OF PARADISE'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by the Town of Paradise's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the Town of Paradise's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that the Town of Paradise considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the Town of Paradise. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

- C. Services of CONSULTANT's personnel in connection with the Town of Paradise's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

#### **ARTICLE XXVII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to the Town of Paradise's operations, which are designated confidential by the Town of Paradise and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by the Town of Paradise relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or the Town of Paradise's actions on the same, except to the Town of Paradise's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by the Town of Paradise, and receipt of the Town of Paradise's written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than the Town of Paradise, HCD, and/or HUD. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of Town or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, Town has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, Town's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### **ARTICLE XXVIII CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS**

The Consultant must take the affirmative steps listed below when subcontracting to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

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

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

#### **ARTICLE XXX EVALUATION OF CONSULTANT**

CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Town, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons for any reason other than a characteristic protected under state employment laws and the California Rules of Professional Conduct, CONSULTANT shall, immediately upon receiving notice from Town of such desire, reassign such person or persons.

#### **ARTICLE XXXI ASSIGNMENT OF PERSONNEL**

CONSULTANT shall assign only competent personnel. CONSULTANT's performance will be evaluated by the Town of Paradise. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

#### **ARTICLE XXXII MISCELLANEOUS PROVISIONS**

- A. Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees (including reasonable costs and disbursements) in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- B. Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the Superior Court for the County of Butte.
- C. Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- D. No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- E. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- F. Licenses and Permits. Law Firm represents and warrants to the Town that Law Firm and its

employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature legally required to practice their respective professions. Law Firm represents and warrants to Town that Law Firm and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals legally required to practice their respective professions. In addition to the foregoing, Law Firm and any subcontractors shall obtain and maintain during the term of this Agreement any required business licenses from Town.

#### **ARTICLE XXXIII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be affected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:               Hawkins Delafield & Wood LLP  
Eric J. Sapir, Project Manager  
1415 L Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

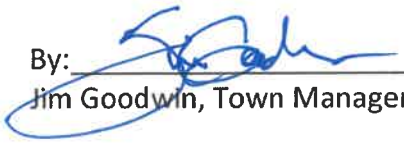
LOCAL AGENCY:           Town of Paradise  
Marc Mattox, Contract Administrator  
5555 Skyway  
Paradise, CA 95969

#### **ARTICLE XXXIV CONTRACT**

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

**ARTICLE XXXV SIGNATURES**

**TOWN OF PARADISE  
A Municipal Corporation**

By:   
Jim Goodwin, Town Manager

**Hawkins Delafield & Wood LLP  
Consultant**

By:   
Name: Eric G. Sapir  
Title: Partner  
Address: One Gateway Center - 24th fl.  
Newark, NJ 07102

**APPROVED AS TO FORM:**

By:   
Scott E. Huber, Town Attorney

ATTEST: September 19, 2023  
By:   
Dina Volenski, Town Clerk

## **TOWN OF PARADISE – AGREEMENT FOR PROFESSIONAL SERVICES**

### **EXHIBIT A SCOPE OF SERVICES**

Hawkins Delafield & Wood  
Consultant

Legal Services for the Paradise Sewer Project  
Project Title

9394  
Budget Account Number

#### **Scope of Work Description:**

##### **Task 1 – Administration**

1. Attend virtual and in-person meetings.
2. Present to stakeholders about the Progressive Design Build (PDB) procurement process.
3. Provide any necessary presentations for the project.
4. Contract administration legal review and analysis.
5. Review contract issues that may come up during any phase of the process.

##### **Task 2 – Information Gathering**

1. Legal Services Kickoff Meeting - The firm will schedule a kickoff meeting to discuss the project background, objectives, and constraints with the Town and its designated Owner's Agent.
2. Risk Assessment - Advise the designated Owner's Agent and Town representatives on risk allocation, retention, and transfer.
3. Stakeholder coordination.
4. General advisement on the Paradise Sewer Project as inquiries arise.

##### **Task 3 – Procurement**

1. Advisement -
  - a. Provide legal analysis and assistance in the PDB procurement plan for the Project. Provide assistance in compliance with procurement procedures for PDB projects and the funding source for the project.
  - b. Provide advisement regarding risk allocation, responsibility allocation, commercial issues from similar PDB projects, and any other procurement issue that may arise.
2. Procurement Process -
  - a. Request for Qualifications (RFQ) Preparation, Advisement, and Evaluation
    - i. Advise the Town to ensure that the RFQ includes all required information and potential items such as contract terms and conditions and a risk allocation matrix.
    - ii. Support the Town staff and the Owner's Agent in drafting and finalizing the RFQ for the Progressive Design Build for the Paradise Sewer Project. Note that the draft PDB Contract, or at a minimum a Term Sheet, described in Task 5 will be included in the RFQ.
    - iii. Provide legal assistance, review, and advisement during the SOQ evaluation process including response to legal questions.
  - b. Request for Proposals (RFP) Preparation, Advisement, and Evaluation -

- i. Support the Town staff and the Owner's Agent in drafting and finalizing the RFP for the Progressive Design Build for the Paradise Sewer Project. Note that the draft PDB Contract described in Task 5 will be included in the RFP.
- ii. Provide legal assistance, review, and advisement during the Proposal evaluation process including response to legal questions.
- iii. Support the Town staff and the Owner's Agent in drafting addenda to the RFP.
- iv. Review and provide legal analysis of proposer exceptions on the PDB Contract.
- v. Provide interview assistance.
- vi. Draft correspondence with proposers for various procurement reasons, including but not limited to RFP results notification.
- vii. General and specific advice on the project, including interface issues between the project and related components of the City's infrastructure system and utilities.

#### Task 4 – Legal Reviews

- 1. Legal reviews of legal analyses completed by other counsel (internal or external).
- 2. Provide a legal memorandum with respect to the Town's authority to deliver a project using the PDB method and what procurement methodology is required per this authority.

#### Task 5 – Contracts

- 1. Structure the PDB Contract for the Town, including accommodations for amendments to account for multiple PDB phases and guaranteed maximum price (GMP) negotiations.
- 2. Assist in developing the negotiation approach for the PDB contract.
- 3. Attend meetings regarding the PDB Contract and provide legal counsel on relevant items.
- 4. Prepare the draft PDB contract and all related appendices (risk allocation, responsibility allocation, technical proposals, financial proposals, etc.). The draft PDB Contract will be a comprehensive document and will be released with the RFP. Work with the Town and the Owner's Agent on the PDB Contract review. Ensure that all funding requirements are incorporated in the final PDB Contract.
- 5. Assist with negotiating the PDB Contract with the successful proposer.
- 6. Prepare the final PDB Contract and all related appendices.
- 7. Present to Town Council the final PDB Contract.
- 8. Manage the closing requirements and the closing process for the PDB contract.
- 9. Review closing deliverables (bonds, insurance certificates, etc.)
- 10. Provide contract administration services, including any work package amendments.
- 11. Provide review of progressive submittals, such as the Definitive Project Submittal.
- 12. Provide legal assistance with negotiating any potential amendments and restatements of the PDB Contract.
- 13. Draft and finalize any amendments and restatements of the PDB Contract.
- 14. Manage the closing of any amendments and restatements of the PDB Contract.

#### Task 6 – Representation

- 1. Participate in discussions with other coordinating agencies. Further communications may be necessary to solve problems.

**TOWN OF PARADISE – AGREEMENT FOR PROFESSIONAL SERVICES**  
**EXHIBIT B COMPENSATION**

Hawkins Delafield & Wood  
Consultant

Legal Services for the Paradise Sewer Project  
Project Title

9394  
Budget Account Number

Compensation for services shall be in accordance with the rates of compensation shown below:

**Hawkins Delafield & Wood LLP – Consultant**

- **Rate Schedule – January 2023 to December 2023**

| Role                                                                          | Rate/hour |
|-------------------------------------------------------------------------------|-----------|
| Lead Partner                                                                  | \$625     |
| Support Partner                                                               | \$625     |
| Senior Associate (At least four years experience)                             | \$550     |
| Junior Associate (Passed the bar exam but less than four years of experience) | \$495     |

Hourly billing rates are for Year 2023 and are effective from January 1, 2023, through December 31, 2023. Rates are subject to change after December 31, 2023. Hawkins Delafield & Wood LLP will invoice by employee billing rate for services provided. The billing rates cover payroll cost, employee benefits, and Hawkins Delafield & Wood LLP overhead and profit.

- **Yearly Escalation**

Yearly escalation of hourly rates is capped at 3.0%. Consultant will be requested to submit an updated rate schedule in November of each calendar year to reflect the escalation for the next calendar year of the agreement.

- **Expenses/Other Direct Costs (ODCs)**

| No. | Description                  | Rate                                         | Links                                                                                                                                   |
|-----|------------------------------|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 1   | Vehicle Mileage (per mile)   | IRS Standard Mileage Rates                   | <a href="https://www.irs.gov/tax-professionals/standard-mileage-rates">https://www.irs.gov/tax-professionals/standard-mileage-rates</a> |
| 2   | Meals and Incidentals (M&IE) | As per the U.S. GSA rates for zip code 95969 | <a href="#">US GSA Rates</a>                                                                                                            |
| 3   | Lodging                      | As per the U.S. GSA rates for zip code 95969 | <a href="#">US GSA Rates</a>                                                                                                            |
| 4   | Airfare                      | Actual cost                                  |                                                                                                                                         |
| 5   | Car Rental                   | Actual cost                                  |                                                                                                                                         |
| 6   | Parking                      | Actual cost                                  |                                                                                                                                         |
| 7   | Postage/overnight mail       | Actual cost                                  |                                                                                                                                         |
| 8   | Printing                     | Actual cost                                  |                                                                                                                                         |

- **Milestone Costs:**

| Task                           | Budget           |
|--------------------------------|------------------|
| Task 1 – Administration        | \$50,000         |
| Task 2 – Information Gathering | \$60,000         |
| Task 3 – Procurement           | \$180,000        |
| Task 4 – Legal Reviews         | \$60,000         |
| Task 5 – Contracts             | \$220,000        |
| Task 6 - Representation        | \$50,000         |
| <b>Total:</b>                  | <b>\$620,000</b> |

**TOWN OF PARADISE – AGREEMENT FOR PROFESSIONAL SERVICES**  
**EXHIBIT C SCHEDULE OF PERFORMANCES**

Hawkins Delafield & Wood  
Consultant

Legal Services for the Paradise Sewer Project  
Project Title

9394  
Budget Account Number

| <b>Task 1</b> | <b>Administration</b>                                                                                                                                          | <b>Start Date</b> | <b>End Date</b> |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------|
| Subtask 1     | Attend virtual and in-person meetings                                                                                                                          | 8/14/2023         | 12/1/2028       |
| Subtask 2     | Present to stakeholders about the PDB process.                                                                                                                 | 8/14/2023         | 12/1/2028       |
| Subtask 3     | Provide any necessary presentations for the project.                                                                                                           | 9/15/2023         | 12/1/2028       |
| Subtask 4     | Contract administration legal review and analysis.                                                                                                             | 8/14/2023         | 12/1/2028       |
| Subtask 5     | Review contract issues that may come up during any phase of the process.                                                                                       | 8/14/2023         | 12/1/2028       |
| <b>Task 2</b> | <b>Information Gathering</b>                                                                                                                                   |                   |                 |
| Subtask 1     | Legal Services Kickoff Meeting.                                                                                                                                | 8/17/2023         | 8/17/2023       |
| Subtask 2     | Risk Assessment                                                                                                                                                | 8/17/2023         | 12/1/2028       |
| Subtask 3     | Stakeholder coordination                                                                                                                                       | 8/17/2023         | 12/1/2028       |
| Subtask 4     | General advisement as inquiries arise.                                                                                                                         | 8/17/2023         | 12/1/2028       |
| <b>Task 3</b> | <b>Procurement</b>                                                                                                                                             |                   |                 |
| Subtask 1     | Advisement                                                                                                                                                     |                   |                 |
| a.            | Legal analysis and assistance in the PDB procurement plan.                                                                                                     | 8/14/2023         | 3/30/2024       |
| b.            | Advisement regarding risk allocation, responsibility allocation, etc.                                                                                          | 8/14/2023         | 6/30/2024       |
| Subtask 2     | Procurement Process                                                                                                                                            |                   |                 |
| a.            | RFQ Preparation, Advisement, and Evaluation                                                                                                                    |                   |                 |
| i.            | Advise the Town to ensure that the RFQ includes all required information and potential items such as contract terms, conditions, and a risk allocation matrix. | 8/17/2023         | 9/29/2023       |
| ii.           | Support the Town staff and the Owner's Agent in drafting and finalizing the RFQ for the PDB for the Paradise Sewer Project.                                    | 8/17/2023         | 9/29/2023       |
| iii.          | Provide legal assistance, review, and advisement during the SOQ evaluation process including response to legal questions.                                      | 9/15/2023         | 12/20/2023      |
| b.            | RFP Preparation, Advisement, and Evaluation                                                                                                                    |                   |                 |
| i.            | Support the Town staff and the Owner's Agent in drafting and finalizing the RFP for the PDB.                                                                   | 10/1/2023         | 12/22/2023      |
| ii.           | Provide legal assistance, review, and advisement during the Proposal evaluation process including response to legal questions.                                 | 12/20/2023        | 5/1/2024        |

|                              |                                                                                                                                                                            |            |            |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|
| iii.                         | Support the Town staff and the Owner's Agent in drafting addenda to the RFP.                                                                                               | 12/20/2023 | 4/15/2024  |
| iv.                          | Review and provide legal analysis of proposer exceptions on the PDB Contract.                                                                                              | 12/20/2023 | 7/1/2024   |
| v.                           | Provide interview assistance.                                                                                                                                              | 3/1/2024   | 6/30/2024  |
| vi.                          | Draft correspondence with proposers for various procurement reasons, including but not limited to RFP results notification.                                                | 3/1/2024   | 9/30/2024  |
| <b>Task 4 Legal Reviews</b>  |                                                                                                                                                                            |            |            |
| Subtask 1                    | Legal reviews of legal analyses completed by other counsel (internal or external).                                                                                         | 8/14/2023  | 12/1/2028  |
| Subtask 2                    | Provide a legal memorandum with respect to the Town's authority to deliver a project using the PDB method and what procurement methodology is required per this authority. | 8/14/2023  | 10/1/2023  |
| <b>Task 5 Contracts</b>      |                                                                                                                                                                            |            |            |
| Subtask 1                    | Structure the PDB Contract for the Town, including accommodations for amendments to account for multiple PDB phases and guaranteed maximum price (GMP) negotiations.       | 8/14/2023  | 12/15/2023 |
| Subtask 2                    | Assist in developing the negotiation approach for the PDB contract.                                                                                                        | 8/14/2023  | 3/30/2024  |
| Subtask 3                    | Attend meetings regarding the PDB Contract and provide legal counsel on relevant items.                                                                                    | 9/1/2023   | 12/1/2028  |
| Subtask 4                    | Prepare the draft PDB contract and all related appendices. Work with the Town and the Owner's Agent on the PDB Contract review.                                            | 8/14/2023  | 3/30/2024  |
| Subtask 5                    | Assist with negotiating the PDB Contract with the successful proposer.                                                                                                     | 2/1/2024   | 9/30/2024  |
| Subtask 6                    | Prepare the final PDB Contract and all related appendices.                                                                                                                 | 8/14/2023  | 9/30/2024  |
| Subtask 7                    | Present to Town Council the final PDB Contract.                                                                                                                            | 3/15/2024  | 9/30/2024  |
| Subtask 8                    | Manage the closing requirements and the closing process for the PDB contract.                                                                                              | 8/14/2023  | 12/1/2028  |
| Subtask 9                    | Review closing deliverables.                                                                                                                                               | 2/1/2024   | 12/1/2028  |
| Subtask 10                   | Provide contract administration services, including any work package amendments.                                                                                           | 8/14/2023  | 12/1/2028  |
| Subtask 11                   | Provide review of progressive submittals, such as the Definitive Project Submittal.                                                                                        | 8/14/2023  | 12/1/2028  |
| Subtask 12                   | Provide legal assistance with negotiating any potential amendments and restatements of the PDB Contract.                                                                   | 8/14/2023  | 12/1/2028  |
| Subtask 13                   | Draft and finalize any amendments and restatements of the PDB Contract.                                                                                                    | 8/14/2023  | 12/1/2028  |
| Subtask 14                   | Manage the closing of any amendments and restatement of the PDB Contract.                                                                                                  | 8/14/2023  | 12/1/2028  |
| <b>Task 6 Representation</b> |                                                                                                                                                                            |            |            |
| Subtask 1                    | Participate in discussions with other coordinating agencies. Further communications may be necessary to solve problems.                                                    | 8/21/2023  | 12/1/2028  |

**TOWN OF PARADISE – AGREEMENT FOR PROFESSIONAL SERVICES**  
**EXHIBIT D INSURANCE PROVISIONS**

Hawkins Delafield & Wood  
Consultant

Legal Services for the Paradise Sewer Project  
Project Title

9394  
Budget Account Number

**INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES**

Consultant shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property that may arise from or be in connection with the performance of the work hereunder by Consultant, Consultant's agents, representatives, employees and subconsultants. Before the contract is executed, consultant shall submit Certificates of Insurance and Endorsements evidencing that consultant has obtained the following forms of coverage:

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE - Coverage shall be at least as broad as:**

- 1) Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability:** ISO's Commercial Automobile Liability coverage form CA 00 01.
  - a. Commercial Automobile Liability: Covering any auto (Code 1) for corporate/business owned vehicles, or if Consultant has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than **\$2,000,000** per accident for bodily injury and property damage.
- 3) Workers' Compensation Insurance:** As required by the State of California with Statutory Limits and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury and disease. *(Not required if Consultant provides written verification he or she has no employees.)*
- 4) Professional Malpractice:** Professional malpractice insurance in the amount of no less than **\$2,000,000** per occurrence or claim.

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Town requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Town.

- B. OTHER INSURANCE PROVISIONS** - The insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1) **Additional Insured Status:** The Town of Paradise, its officers, agents, officials, employees and volunteers as well as the State of California, its officers, agents, and employees and other entities as directed by the Town are to be covered as additional insureds on the CGL and Commercial Auto policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later edition is used).
  - 2) **Primary Coverage:** For any claims related to this contract, Consultants insurance coverage shall be primary and non-contributory and at least as broad as ISO Form CG 20 01 04 13 as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies but shall not apply to professional liability insurance..
  - 3) **Umbrella or Excess Policy:** The Consultant may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess policies shall provide all of insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions, indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.
  - 4) **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with at least a 30-day notice to the Town.
- C. **WAIVER OF SUBROGATION:** Consultant hereby grants to Town a waiver of any right to subrogation which any insurer (professional liability insurer) of said Consultant may acquire against the Town by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Town has received a waiver of subrogation endorsement from the insurer.
- D. **SELF-INSURED RETENTIONS:** Self-insured retentions must be declared to and approved by the Town. The Town may require Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention (SIR) may be satisfied by either the named insured or Town. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention or deductible that exceeds \$25,000 unless approved in writing by the Town. Any and all deductibles and self-insured retention shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. The Town may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any SIR provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.
- E. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.
- F. **VERIFICATION OF COVERAGE:** Consultant shall furnish the Town with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this clause and a copy of the Declarations and Endorsement Pages of the CGL and any Excess policies listing all policy endorsements.

All certificates and endorsements and copies of the Declaration & Endorsements pages are to be received and approved by the Entity before contract execution. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The Town reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- G. SPECIAL RISKS OR CIRCUMSTANCES:** Town reserves the right to modify these requirements including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- H. SUBCONSULTANTS:** Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that the Town is an additional insured on insurance required from subconsultant.
- I. CLAIMS MADE POLICIES:** If any of the required policies provide coverage on a claims-made coverage:
  - 1) The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
  - 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
  - 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
  - 4) A copy of the claims reporting requirements must be submitted to the Town for review.

## TOWN OF PARADISE – AGREEMENT FOR PROFESSIONAL SERVICES

### EXHIBIT E ADDITIONAL FEDERAL PROVISIONS

#### HUD FUNDED PROJECTS

Hawkins Delafield & Wood  
Consultant

Legal Services for the Paradise Sewer Project  
Project Title

9394  
Budget Account Number

#### **Expense contracts; Regulatory Compliance Requirements**

All Town contracting shall comply with 2 CFR, Part 200 and legislation for the regulation of labor, safety and environmental protection, emergency preparedness and advisories, and any other codified criteria including but not limited to the following as relevant to this Contract, which supersedes any conflicting provisions of this Agreement:

#### **1. Remedies:**

##### **A. Contractor Performance and the Breach Thereof**

The Town may terminate this Contract and is relieved of the payment of any consideration to the Consultant should the Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. The Consultant shall be notified in a timely manner of default and provided 30 days in which to remedy the default. If at the end of the 30 days, if remedy is not made or does not satisfy the default, the Town shall notify the Consultant of the breach and thereby the termination of this Contract. In the event of such termination, the Town may proceed with the work in any manner deemed proper by the Town. The cost to the Town shall be deducted from any sum due the Consultant under this agreement and the balance, if any, shall be retained by the Town.

##### **B. Termination for Cause and Convenience**

In the event the Consultant fails to perform in accordance with the terms of this Contract within the time specified, if any, or a reasonable time after placement of this order, the Town Treasurer may by written notice, cancel this Contract and may hold the Consultant liable for any damage caused the Town by reason of failure to perform in accordance with these conditions.

It is agreed by the parties to this Contract that in case all the work called for under the Contract in all parts and requirements is not finished or completed within the time period as set forth in this Contract, damage will be sustained by the Town of Paradise, and that it is and will be difficult or impossible to ascertain and determine that actual damage which the Town will sustain in the event of and by reason of such delay; and it is therefore agreed that the Consultant shall pay to the Town the sum of one hundred dollars (\$100) per calendar day for each and every working days' delay in finishing the work in excess of the time period prescribed; and the Consultant agrees to pay said liquidated damages as herein provided, and in case the same is not paid, agrees that the Town may deduct the amount thereof from any money due or that may become due the Consultant under this Contract or any other Contract between the Town and the Consultant.

## **2. Compliance with State and Federal Laws and Regulations**

The Contractors shall comply with all local, state, and federal laws, statutes, and regulations, as well as policies and procedures established by the Department for the administration of the DR-Infrastructure programs, as the same may be amended from time to time.

## **3. CDBG-DR Requirements**

Consultant shall be in compliance with CDBG-DR requirements, the 2018 DR-Infrastructure Policies and Procedures.

## **4. “Anti-Kickback Act of 1986” (41 U.S.C. §§ 51-58)**

The “Anti-kickback Act of 1986” provides that the Town and the Consultant shall be prohibited from attempting as well as completing “kickbacks,” which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The inclusion of kickback amounts in contract prices is prohibited conduct in itself. This act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.

## **5. Compliance with the Contract Work Hours and Safety Standards Act 40 U.S.C. 3701–3708**

As applicable Documentation shall be maintained that demonstrates compliance with hour and wage requirements for this section and submitted upon request to the Town.

- A. Overtime requirements. Workers must receive “overtime” compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

## **6. Davis-Bacon Act (Title 29 CFR, Subtitle A, Parts 1, 3, and 5)**

The Consultant must abide by the Davis-Bacon Act as amended (40 U.S.C 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contracts must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contracts must be required to pay wages not less than once a week.

## **7. Environmental Compliance**

- A. The Consultant shall comply with the California Environmental Quality Act (CEQA) requirements as applicable.
- B. The Consultant agrees to comply with the Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements, specified in said Section 114 and Section 308, and all applicable standards, orders, regulations and guidelines issued thereunder. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- C. The Consultant shall comply with the requirements of the Clean Air Act, 42 U.S.C. 1857, *et seq.*, as amended, and all applicable standards, orders and regulations. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- D. The Consultant shall comply with EPA regulation pursuant to 40 CFR Part 50, as amended.
- E. The Consultant shall comply with HUD regulation pursuant to 24 CFR Part 58.
- F. The Consultant shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- G. The Consultant shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. The Consultant shall also comply with Executive Order 11593 on the protection and enhancement of the cultural environment. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.
- H. The Consultant and the Town agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387), the Environmental Protection Agency (EPA) regulation pursuant to 40 CFR Part 50 as amended, the HUD regulation pursuant to 24 CFR Part 58, the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the National Historic Preservation Act of 1966 as amended 16 U.S.C. 470, the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and the procedures set forth in 36 CFR Part 800 (Advisory Council on Historic Preservation Procedures for Protection of Historic Properties). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **8. Procurement of Recovered Materials**

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

Pursuant to 30 CFR 247.2, this clause shall apply to items purchased under this Agreement where: (1) Consultant purchases in excess of \$10,000 of the item under this contract; (2) during the preceding Federal fiscal year, the Consultant: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

## **9. Suspension and Debarment**

The Town does not employ vendors or contractors or award contracts to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB

guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspensions". SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order.

See Attachment B.2– Certification Regarding Department, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

#### **10. Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended)**

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See the certification in Attachment B.1.

#### **11. Equal Opportunity Requirements and Responsibilities**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1065 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The obligations undertaken by Subrecipient include, but are not limited to, the obligation to comply with all federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time. The consultant, performing work under this contract, shall follow these laws and regulations:

- A. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
- B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- C. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This section of Title 1 provides that no person shall be excluded from participation

(including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.

- E. **The Fair Housing Amendment Act of 1988:** This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- G. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- H. **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- I. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- J. **Executive Order 12259:** This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- K. **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- L. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment**

**Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.

M. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

N. **Executive Order 11246:** This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

## **12. Minority Business Enterprises and Women's Business Enterprises**

The Consultant must make affirmative steps to assure that minority business enterprises and women's business enterprises are used when possible. The affirmative steps must include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

## **13. Relocation, Displacement, and Acquisition**

The Contractor shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and regulations adopted to implement the Act in 24 CFR Part 42, 49 CFR Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 as they are applicable.

## **14. Consultant Agreements:**

- A. Consultant shall:
  - 1) Perform the Approved Project activities in accordance with federal, state, and local regulations, as are applicable.
  - 2) Provide security to assure completion of the Approved Project(s) by furnishing the borrower and construction lenders with proof of sufficient insurance and performance and payment

bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual Project will be required.

- 3) Compliance with all State and federal requirements described in this Agreement including without limitation those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
- 4) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Project activities.
- 5) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the Approved Project activities.
- 6) Compliance with the applicable Equal Opportunity Requirements described in Exhibit E, Section 12 of this Agreement.

B. Consultants and Subconsultants shall follow the Drug-Free Workplace Act of 1988, which include the items below:

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

## **15. Copeland "Anti-Kickback" Act**

The Copeland "Anti-Kickback" Act (40 U.S.C. 3145) provides that the Town and the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Town must report all suspected or reported violations to the Federal awarding agency.

## **16. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Town or the Consultant wishes to enter into a contract with a small business consultant or nonprofit organization regarding the substitution of parties, assignment or performance of experimental,

developmental, or research work under that “funding agreement,” the Town or the Contractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Consultants Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

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

- A. This contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
- B. The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
- C. The Town has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.