

TOWN OF PARADISE – MASTER PROFESSIONAL SERVICES AGREEMENT

ARTICLE I INTRODUCTION

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

The name of the “CONSULTANT” is as follows: HDR Engineering, Inc., qualified to do business in California.

The Program Manager (also referred to as the Project Manager or Owner’s Agent) for the “CONSULTANT” will be Guy Voss.

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 subsequent approved Task Orders, per Exhibit B-Compensation. If there is any conflict between the Exhibit B-Compensation 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 and required to be indemnified (“Indemnified Parties”), excluding the contractor hired by the Town for the Project, from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel’s fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct 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, or failure to perform, services under this AGREEMENT. CONSULTANT’s duty to indemnify and hold harmless AGENCY shall not extend to the AGENCY’s sole or active negligence.

2. Duty to Defend

In the event the AGENCY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from , CONSULTANT’S negligent or wrongful acts, errors or omissions, and upon demand by AGENCY, CONSULTANT shall defend the AGENCY at CONSULTANT’S cost or at AGENCY’S option, to reimburse AGENCY for its costs of defense, including reasonable attorney’s fees and costs incurred in the defense of such matters to the extent the matters are caused by CONSULTANT’S negligence, recklessness or willful misconduct. Payment by AGENCY is not a condition precedent to enforcement of this indemnity.

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 Program 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

- A. CONSULTANT shall submit written progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report shall be sufficiently detailed for the Town of Paradise's Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide *communication of interim* findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Program 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

- A. Scope 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.
- B. Standard of Care. The standard of care for CONSULTANT's services shall be the care and skill ordinarily used by members of CONSULTANT's profession, practicing under the same or similar circumstances.
- C. Cost Estimates. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the Town of Paradise's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates. If the Town of Paradise requires greater assurance as to any element of project cost, feasibility, or schedule, Consultant will employ an independent cost estimator, contractor, or other appropriate advisor.
- D. Responsibility for Design. Town of Paradise and CONSULTANT acknowledge and agree that the design services for the program are engaged by Town through retention of a separate design-build contractor.
- E. Notwithstanding any provision to the contrary, Consultant shall have no responsibility for the accuracy or sufficiency of documentation prepared by the design-build contractor. In the event Consultant is requested to perform constructability reviews, value engineering or any other reviews or tasks involving the design for the work for the project, it is understood that such reviews will not render Consultant liable in any manner for the duties of the design-build contractor.
- F. Construction Procedures. The presence or duties of Consultant's personnel at a construction site, whether as onsite representatives do not make Consultant or Consultant's personnel in any way responsible for those duties that belong to Town and/or the design-build contractor or other entities, and do not relieve the design-build contractor or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, scheduling, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work.

ARTICLE IV PERFORMANCE PERIOD

- A. Exhibit C is the "SCHEDULE OF PERFORMANCES" and is attached and incorporated. This AGREEMENT shall go into effect on (date), 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 June 30, 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.
- C. The period of performance for each specific task shall be in accordance with the Task Order for that task. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by a mutually-approved written amendment on the same terms and conditions prior to the expiration of the agreement to cover the time needed to complete the task order in progress only. The maximum term of this agreement shall not exceed five (5) years.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. Unless otherwise agreed for a Task Order, CONSULTANT will be compensated hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal, described in Exhibit B entitled "COMPENSATION". The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by the Town of Paradise's Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order when presented along with documentation of such costs acceptable to the Town.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders by the Contract Administrator.
- D. After a project to be performed under this AGREEMENT is identified by the Town of Paradise, the Town of Paradise will prepare a draft Task Order. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, and project schedule. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost: the finalized Task Order shall be signed by both the Town of Paradise and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

- F. Reimbursement for transportation and subsistence costs shall not exceed State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by the Town of Paradise and notification to proceed has been issued by the Town of Paradise's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to the Town of Paradise and signed by an authorized representative of the Town of Paradise. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the Town of Paradise.
- K. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this agreement.
- L. The total amount payable by the Town of Paradise for an Individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- M. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- N. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT or to exceed the scope of work under this AGREEMENT.
- O. The total amount payable by the Town of Paradise for all Task Orders resulting from this AGREEMENT shall not exceed \$5,000,000. It is understood and agreed that there is no guarantee, either express or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.
- P. CONSULTANT will be reimbursed, generally within 30 days of receipt of Town's approval of an itemized invoice. Town of Paradise shall review each invoice as soon as possible and advise Consultant of any deficiencies therein Failure to identify deficiencies is not consent to payment. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) days after the performance of work for which CONSULTANT is billing or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and task order. Invoices must be submitted sequentially, i.e. Invoice 3 cannot be submitted to be paid

before invoice 2. Credits due to the Town of Paradise that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. 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

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by the Town of Paradise without cause immediately. Town may terminate for cause upon, thirty (30) calendar days' prior written notice (delivered pursuant to the provisions of Article XXXII Notification) of intent to terminate, specifying the breach and allowing the 30 days to cure. 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 work completed in accordance with the requirements of this AGREEMENT. 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 STATE PREVAILING WAGE RATES

- A. No CONSULTANT or subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR shall be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at the Town of Paradise's construction sites, at Town of Paradise facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve the Town of Paradise projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records
 1. Each CONSULTANT and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall

be made available for inspection and copying by the Town of Paradise representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of the Town of Paradise, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to the Town of Paradise, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the Town of Paradise's Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT and subconsultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Town of Paradise shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform the Town of Paradise of the location of the records enumerated under paragraph (1) above, including the street address, Town and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to the Town of Paradise, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by the Town of Paradise from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the Town of Paradise's Contract Administrator.

F. Penalty

1. The CONSULTANT and any of its subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any subconsultant shall forfeit to the Town of Paradise a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or subconsultant.
4. If a worker employed by a subconsultant on a public works project is not paid the general prevailing per diem wages by the subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the certified payroll records of the subconsultant.
 - c. Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the subconsultant for work performed on the public works project, the CONSULTANT shall obtain a declaration signed under penalty of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem

wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, the Town of Paradise shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If the Town of Paradise determines that employees of a subconsultant were not paid the general prevailing rate of per diem wages and if the Town of Paradise did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Town of Paradise.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the Town of Paradise, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the sub agreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him, her, or it shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANT and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII 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 XIV 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 XV 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 XVI 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 XVII 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 XIX 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 XX 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 XXI 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 Program 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 XXII 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 XXIII 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 as set out in A below.

- A. As used here, "dispute" means a difference in interpretation of plans, specs, change order or other oral or written instructions that is not otherwise resolved in the normal project procedures and decision-making processes.
- B. Either party may raise a dispute; however, such dispute must be raised within _60 days or it is waived.
- C. During the term of the contract, 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. The decision of the Town Manager will be the final administrative decision.

E. Any litigation that is commenced, must begin within 60 calendar days of a final decision.

F. 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 XXIV 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 XXV 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 XXVI 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 XXVII 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 XXVIII 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 XXIX 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 XXX 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 XXXI EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by the Town of Paradise. A copy of the evaluation, if performed, will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXII RETENTION OF FUNDS

No retainage will be withheld by the Town of Paradise from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant.

ARTICLE XXXII 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:	HDR Engineering, Inc. Guy Voss, Program Manager 2379 Gateway Oaks Dr #200 Sacramento, CA 95833
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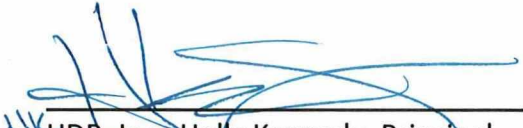
LOCAL AGENCY: Town of Paradise
Marc Mattox, Contract Administrator
5555 Skyway
Paradise, CA 95969

ARTICLE XXXIII CONTRACT

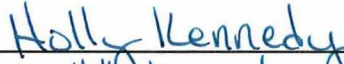
The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments 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 XXXIV SIGNATURES

**TOWN OF PARADISE
A Municipal Corporation**


HDR, Inc., Holly Kennedy, Principal
HDR Engineering, Inc.

By: 
Marc Mattox, Interim Town Manager

By: 
Name: Holly Kennedy
Title: Sr. Vice President
Address: 2365 Iron Point Rd, #300
Folsom, CA 95630

APPROVED AS TO FORM:

ATTEST:

By: 
Scott Huber, Town Attorney

By: _____
Dina Volenski, Town Clerk