

**AGREEMENT BY & BETWEEN CITY OF FIREBAUGH
AND
GUTIERREZ/ASSOCIATES**

This Agreement entered into this 19th day of September 2016, by and between the CITY OF FIREBAUGH, a Municipal Corporation, hereinafter referred to as "CITY", and GUTIERREZ/ASSOCIATES, a Sole Proprietorship, hereinafter referred to as "CONSULTANT". Agreement concerns Community Development Block Grant Project No. 15-CDBG-10568.

WITNESSETH

WHEREAS, the CITY desires to engage the CONSULTANT to render professional architectural services, hereinafter described in connection with the above described Community Development Block Grant project referenced above; and

WHEREAS, the City of Firebaugh has complied with state and federal procurement requirements regarding the selection of CONSULTANTS, and

WHEREAS, the City of Firebaugh desires to enter into an agreement with the CONSULTANT as hereinafter provided to assure the effective management of the projects; and

WHEREAS, CONSULTANT is a corporate organization consisting of persons specially trained and experienced in architectural design services that are competent to perform the services required by the CITY.

NOW, THEREFORE, CITY and CONSULTANT, for the consideration hereinafter set forth, agree as follows:

A. SERVICES BY CONSULTANT

CONSULTANT shall employ architects, draftsmen, technicians, clerical staff and professional CONSULTANTS, all properly skilled in the various aspects of the services to be furnished under this Agreement. Services to be performed by CONSULTANT shall fall under one of the following three categories:

1. Scope of Services

The CONSULTANT agrees to provide all of the services for this contract, in a complete and acceptable form, as customarily provided according to professional standards for the completion of the contract which shall include:

Architectural and Structural, Mechanical, and Electrical Engineering design services are included, to provide a complete project, including standard planning review, contract documents, bidding support, and construction administration services. See Exhibit 1.

2. Changes:

The CITY may request changes of the CONSULTANT in the Scope of Services to be performed hereunder. Such changes, or renegotiation, including any increase or decrease in the amount of the CONSULTANT'S compensation, which is mutually agreed upon by and between the CITY and the CONSULTANT, shall be incorporated in written amendments to this contract. The contract may be extended under mutually agreed provisions, through a written amendment to this document.

B. TIME OF PERFORMANCE

This Agreement shall commence on the *19th day of September 2016*. The CITY and CONSULTANT may terminate this Agreement at any time with or without cause and for non-performance by giving at least thirty (30) days' written notice. If contract is terminated, CONSULTANT shall be compensated for work performed up to the date of termination. CITY and CONSULTANT agree that time is of the essence for CONSULTANT performance of responsibilities enumerated in Section A.

Agreement will expire on the *18th day of September 2018*.

C. TERMINATION OF CONTRACT

If through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the CONSULTANT shall violate any of the covenants, agreements or stipulations of this contract, the CITY shall thereupon have the right to terminate this contract by giving written notice to the CONSULTANT of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other materials prepared by the CONSULTANT under this contract shall, at the option of the CITY become its property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents or materials.

Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the CONSULTANT, and the CITY may withhold any payments to the CONSULTANT for the purpose of setoff until such time as the exact amount of damages due the CITY from the CONSULTANT is determined.

The CITY may terminate this contract at any time by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least thirty (30) days prior to the effective date of such termination. In such event, all finished or unfinished documents and other materials as described in the above clause, shall, at the option of the CITY, become its property.

If the contract is terminated by the CITY as provided herein, the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and materials. The CONSULTANT shall also be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the CONSULTANT during the contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. If this contract is terminated due to the fault of the CONSULTANT, the above clause relative to termination shall apply.

Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other. Upon termination, CONSULTANT shall be paid for services performed to date of termination.

D. COMPENSATION AND METHOD OF PAYMENT

CITY will pay CONSULTANT in accordance with the attached schedule as provided in the Proposal hereto attached as *Exhibit 1*. *Total compensation shall not exceed \$64,000.*

CONSULTANT shall submit to CITY monthly itemized invoices for the services rendered. If the work is satisfactorily completed, CITY shall pay such invoice within thirty (30) days of its receipt. Should CITY dispute any portion of any invoice, CITY shall pay the undisputed portion within the time stated above, and at the same time advise CONSULTANT in writing of the disputed portion.

E. COMPLIANCE WITH LAWS AND REGULATIONS

CONSULTANT agrees that it shall conduct its work and perform its services in compliance with all applicable laws and regulations of Fresno County, California, and any office, department or agency thereof, as well as other laws and regulations as may be applicable thereto. Attached hereto are other State and Federal Regulations (see Exhibit 2) imposed by funding agreement between the City and CDBG. All regulations as outlined in Exhibit 2 are made part of this contract by this reference.

F. INSURANCE

CONSULTANT shall maintain insurance and shall submit certificates of insurance evidencing that insurance meeting the following requirements is being provided. Additional insurance requirements are outlined in A-4 and are made part of this contract by this reference as required by the Department of Housing and Community Development:

1. Errors and Omissions Insurance. CONSULTANT shall have such errors and omissions insurance as shall protect CITY, its officers, directors, employees and agents from claims based on errors or negligent acts or omissions which may arise from CONSULTANT'S operations or performance under this Agreement, whether claims be made during or subsequent to the term of this Agreement, and whether such operations or performance be by CONSULTANT or its employees, CONSULTANTS, agents or anyone else directly or indirectly employed by any of the foregoing. The amount of this insurance shall not be less than \$1,000,000.

Said policy shall be continued in full force and effect during the term of this Agreement. In the event of termination of said policy, new coverage shall be obtained for the required period to insure for the prior acts of CONSULTANT during the course of performing services under the terms of this Agreement.

2. Workers Compensation. CONSULTANT shall carry such insurance as will protect CITY and CONSULTANT from claims under Workers Compensation and Employer's Liability Acts; such insurance to be maintained as to the type and amount in strict compliance with State statutes.
3. Compliance with Labor Code of State of California. Pursuant to the provisions of Section 3700 of the Labor Code, CONSULTANT will require every employer to be insured against liability for workmen's compensation, or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the work of a particular agreement. Furthermore, CONSULTANT shall also provide evidence of workmen's compensation insurance, unemployment insurance, and disability insurance to cover all of CONSULTANT's employees.
4. General Liability. CONSULTANT shall obtain and keep in full force and effect general liability insurance including provisions for contractual liability, personal injury, independent CONSULTANTS and broad form property damage coverages. This insurance shall be on a comprehensive occurrence basis form with a stand cross liability clause or endorsement. The limit for this insurance shall be no less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

5. Automobile Liability. CONSULTANT shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased, rented or borrowed. This insurance shall have a standard cross liability clause or endorsement. The limit amount for this insurance shall be no less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
6. Within thirty (30) days of the date of this Agreement, the CONSULTANT shall provide the CITY with Certificates of Insurance demonstrating compliance with provisions 1 through 4 above. Said certificates shall specify or endorse to provide that ten (10) days notice shall be given in writing to the CITY of any cancellations.

G. INFORMATION FURNISHED BY CITY

Consistent with the professional standard of care and unless specifically provided herein, CONSULTANT shall be entitled to rely upon the accuracy of data and information provided by CITY or others without independent review or evaluation.

H. INDEMNIFICATION AND HOLD HARMLESS

CONSULTANT shall protect, indemnify, hold harmless and defend CITY, its directors, officers, employees and agents, from any and all claims, fines, demands, costs, expenses (including but not limited to attorney fees and costs of litigation or arbitration), liability, losses, penalties, causes of action, awards, suits or judgments for damages of any nature whatsoever (hereinafter collectively referred to as Claims) to the extent arising out of the breach of this Agreement in whole or in part by willful or fraudulent misconduct or negligent acts, by CONSULTANT, its employees, agents or CONSULTANTS, or the agent, employee or CONSULTANT of any one of them in the performance of their duties or in their operations under this Agreement.

CITY shall protect, indemnify, hold harmless and defend the CONSULTANT, its officers, directors, employees and subcontractors from any and all claims, fines, costs, demands, expenses (including but not limited to attorney fees and costs of litigation or arbitration), liability, losses, penalties, causes of action, awards, suite or judgments for damages of any nature whatsoever (hereinafter collectively referred to as "Claims") to the extent arising out of the breach of this Agreement in whole or in party by willful or fraudulent misconduct or negligent acts, by CITY, its employees, agents or CONSULTANTS, or the agent, employee or CONSULTANT of any one of them in the performance of their duties or in the operations under this Agreement.

CITY will defend, indemnify, and hold CONSULTANT harmless from any and all claims arising from or resulting from the performance of such services by others and CITY except claims caused by the negligence of CONSULTANT.

Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release either party from its obligations to indemnify as to any Claims so long as the event upon which such Claims is predicted shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by either party, its employees, agents or CONSULTANTS, or the employee, agent or CONSULTANT of any one of them.

Submission of insurance certificates or other proof of compliance with the insurance requirements in this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. The obligation of this indemnity article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

I. ASSIGNMENT

CONSULTANT shall not assign this Agreement, nor any part thereof, nor any monies due hereunder, without the prior written consent of CITY.

J. RECORDS OF CONSULTANT

Records of CONSULTANT's direct personnel and reimbursable expenses pertaining to the service hereunder shall be kept on a generally recognized accounting basis, and shall be available for inspection by CITY or its designees at reasonable times.

K. AMMENDMENTS

This AGREEMENT may be amended by a written amendment executed by both parties.

L. OWNERSHIP OF DOCUMENTS

a. Originals of drawings, specifications, estimates, field notes and calculations prepared by CONSULTANT shall be and remain in the property of CONSULTANT.

b. Reproducibles of such documents, and models, prints and photographs shall be and remain the property of the CITY. Such materials shall be kept by CONSULTANT for CITY and shall be delivered to the CITY on request or termination. Such documents are not intended or represented to be suitable for reuse by CITY or others on extensions of the project or any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from CONSULTANT will be at CITY's sole risk and without liability to CONSULTANT. CITY assumes full responsibility for such changes unless CITY has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes. Electronic data delivered to CITY is for CITY's convenience and shall not include the professional stamp or signature of an engineer or architect. CITY agrees that CONSULTANT shall not be liable for claims, liabilities or losses arising out of, or connected with the decline of accuracy or readability of electronic data due to inappropriate storage conditions or duration.

M. NON-DISCRIMINATION

In connection with the performance of CONSULTANT pursuant to this Agreement, CONSULTANT will not willfully discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, ancestry or national origin. Such action shall include, but not limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

N. FAIR EMPLOYMENT PRACTICES

CONSULTANT will permit access to records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices Commission, or any other agency of the State of California designated by awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices Provision. In the event of any violations by the CONSULTANT of state fair employment laws, the State of California shall have the right to terminate this AGREEMENT either in whole or in part. In the

event of such termination, any loss or damage sustained by the State of California and/or CITY in securing the goods or services hereunder shall be borne and paid for by the CONSULTANT and by their surety under performance bond, if any, and, in addition to other remedies, the State of California and the CITY may deduct from any monies due or that thereafter become due to the CONSULTANT the difference between the price named in the particular agreements and the actual cost thereof to the State of California and the CITY.

O. AFFIRMATIVE ACTION

In rendering the services contemplated by this AGREEMENT with the CITY, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, marital status, sexual orientation or national origin. CONSULTANT shall also comply with Title IV of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

Furthermore:

- A. CONSULTANT shall take affirmative action to insure that job applicants are employed and that employees are treated during employment without regard to race, religion, sex, color, age, national origin, or physical handicap. The term "affirmative action" shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. CONSULTANT agrees to post such notices, to be provided, setting forth the provisions of this equal employment opportunity and affirmative action program.
- C. CONSULTANT shall in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT state that all qualified applicants will receive consideration to employment without regard to race, religion, sex, color, age, national origin, or physical handicap. Notification that CONSULTANT is an "Equal Opportunity Employer" or "EOE" constitutes satisfaction of this notice requirement.

P. NOTICES

All notices, statements, reports, approvals, or requests or other communications, that are required either expressly, or by implication, to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in the U.S. Post Office for delivery. Unless, and until formally notified otherwise, all notices shall be addressed to the parties at their address shown below:

CITY

CITY OF FIREBAUGH
1133 "P" Street
Firebaugh, California 93622

CONSULTANT

GUTIERREZ/ASSOCIATES
315 14th Street, 2nd Floor
Oakland, CA 94612

Q. ATTORNEY FEES

In the event of any arbitration, litigation, or other action or proceeding of any nature, between CITY and CONSULTANT becomes necessary to enforce or interpret all or any portion of this Agreement, or because of an alleged breach by either party of any of the terms hereof, it is mutually agreed that

the losing or defaulting party shall pay the prevailing party reasonable attorney fees, costs and expenses incurred in connection with the prosecution or defense of such action or proceeding.

R. ENTIRE AGREEMENT

This writing constitutes the entire Agreement between the parties relative to the services specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement except those contained or referenced to in this writing.

S. AGENT OF CITY

In performing the services required under this Agreement, CONSULTANT is acting as an agent of CITY, subject to the general supervision and control of its governing body. As such, CONSULTANT shall be entitled to the same immunities and protections as any other governmental employee exercising discretion under all applicable statutes, regulations, and judicial and administrative precedent, subject to CITY's rights of action against CONSULTANT for any professional errors or omissions of CONSULTANT.

T. STATUS OF CONSULTANT

1. CONSULTANT is and shall at all times during the terms of this Agreement remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner or to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is conferred under this Agreement or is otherwise expressly conferred in writing by CITY.
2. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.
3. Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY's employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

U. SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

V. WAIVER OF RIGHTS

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

W. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of any remedy provided by law.

X. MISCELLANEOUS PROVISIONS

CITY will include in the general conditions of any construction contract, language which states that the construction contractor is required to hold harmless and defend the CITY, CONSULTANT, and their agents, employees and CONSULTANTS, from all suits and actions, including attorneys' fees, and all costs of litigation and judgments of any nature and description arising out of or incidental to the performance of the construction contract or work performed thereunder, and which are caused by the negligence or intentional act of the contractor. The CITY, CONSULTANT, their agents, employees and CONSULTANTS shall also be named as additional insureds in any construction contractor's insurance policies.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF FIREBAUGH

ATTEST:

By, _____
Ben Gallegos, City Manager

By, _____
Deputy City Clerk

GUTIERREZ ASSOCIATES

By, _____
Efren Gutierrez, Principal Architect

EXHIBIT 2

Proposal / Scope of Work/ Compensation

EXHIBIT 2

CDBG AND FEDERAL REGULATIONS

FEDERAL TERMS AND CONDITIONS:

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

AFFIRMATIVE ACTION:

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

SECTION 3:

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the HUD, Community Development Block Grant Program, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the project area and that the contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project. Regulations for implementing the Section 3 clause are contained in 24 CFR 135, as amended, and as specified in the project specifications.

NON-DISCRIMINATION CLAUSE:

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

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

EQUAL OPPORTUNITY:

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

1. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
2. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City Setting forth the provisions of this nondiscrimination clause.
3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

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

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

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

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

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

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

1. Affirmative steps shall include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

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

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

COMPLIANCE WITH ALL FEDERAL LABOR STANDARD PROVISIONS: Contractor shall comply with all provisions contained in the form HUD-4010, Federal Labor Standards Provisions.

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

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

REQUIREMENTS AND REGULATIONS PERTAINING TO DATA AND DESIGN:

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

REQUIREMENTS AND REGULATIONS PERTAINING TO REPORTING:

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

COMPLIANCE WITH CLEAN AIR ACT AND CLEAN WATER ACT:

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

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

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

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

D/MBE/WBE IMPLEMENTATION GUIDELINES:

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

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

AUDIT, RETENTION AND INSPECTION OF RECORDS:

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

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