



**FOCUSED REQUEST FOR PROPOSALS (RFP)**  
**MUNICIPAL HUMAN RESOURCES SERVICES**

**January 7, 2019**

# CITY OF CUDAHY

## FOCUSED REQUEST FOR PROPOSAL (RFP)

### MUNICIPAL HUMAN RESOURCES SERVICES

#### I. Introduction

The City of Cudahy (City) is seeking proposals from qualified human resources professional firms to provide human resources services. The scope of work, proposal format, submittal guidelines, and evaluation and selection process are described in this Focused Request for Proposal (“RFP”).

#### II. Background

Cudahy is located in Southeast Los Angeles County, next to the L.A. River. The City was incorporated on November 10, 1960 and named after its founder, meat-packing baron Michael Cudahy, who purchased the land known as Rancho San Antonio in 1908 for development. Cudahy is 1.1 square miles with a current population of 25,870. The City is a general law city and operates under the council-manager form of government.

The City is seeking a qualified human resource professional firm to achieve and develop strategies needed to sustain the overall goals and duties of the department, in collaboration with select City staff.

The City may enter into a Professional Services Agreement (PSA) with the selected firm. The length of the agreement will be for a one-year term with two (2) one-year options to extend the PSA.

#### III. Scope of Work and Requirements

The City’s Human Resources Department is responsible for maintaining a healthy, safe, and positive work environment for all employees of the City.

##### A. Scope of Services:

The selected human resources firm would assist the City Manager with day-to-day Human Resources tasks as they relate to:

- Recruitments;
- Employee Relations;
- Job Classification and Compensation;
- Employee Benefits;
- Labor Negotiations;
- Performance Evaluations;

- Training and Staff Development / Succession Planning; and
- Workers Compensation Program.

B. Requirements:

- Have a reputation for reliability, honesty and integrity; maintain professional liability insurance
- Minimum of 5 years professional generalist experience in human resources, including management experience.
- Have no conflicts of interests within the meaning of the Political Reform Act, common law conflicts or Government Code Section 1090.

**IV. Proposal Format and Content**

A. Provide a letter proposal of no more than 3 (three) pages indicating the qualifications of the proposed individual(s) providing Human Resources services that includes, but is not limited to the following:

- A brief description of the respondent's work history and previous experience as Human Resource professional.
- A description of relevant projects completed by the respondent within the past five (5) years.
- References with contact information from organizations that have used respondent's services for similar projects/installations within the past 12-18 months.

B. Cost Proposal

- Firm's Rate Schedule, including hourly or fixed-rate for cases.
- Firm's total cost to perform the work in its entirety including a breakdown of the costs for any and all reimbursable costs such as travel costs, mailing costs, fax, electronic research and any other direct or indirect costs associated with performing the required services.

C. Any additional information the Consultant deems appropriate.

**V. Submittal Guidelines**

Proposals shall be submitted to the address below:

**City of Cudahy  
Jose E. Pulido, City Manager  
5220 Santa Ana Street  
Cudahy, CA 90201**

Three (3) printed copies of the proposal letter are required to be mailed or hand delivered to the address indicated above on or before the submittal deadline as stated in Section VI. Any inquiries related to the RFP should be directed to Jose E. Pulido at (323) 773-5143, ext. 226 or emailed to [jpulido@cityofcudhayca.gov](mailto:jpulido@cityofcudhayca.gov).

**VI. RFP Schedule**

- A. Distribution of RFP: January 7, 2019
- B. Submittal deadline: January 21, 2019
- C. Proposals are evaluated: January 22-24, 2019
- D. City Staff interviews top proposers (If needed): January 28, 2019
- E. City Staff determines successful proposer: January 29, 2019
- F. Finalize Agreement with successful proposer: January 30, 2019
- G. Contract subject to Council approval: February 5 or 19, 2019
- H. If approved, contract effective date: February 6 or 20, 2019

**VII. Evaluation and Selection Process**

The Proposer rated to be the most responsive and responsible to all specified requirements in a quality and cost-effective manner may be awarded a contract. Proposals will be evaluated utilizing the following criteria:

- Background and experience of the Consultant in conducting similar work
- Ability to complete the work in a timely manner
- Accessibility and Availability
- Cost
- References

As part of the evaluation process, the City of Cudahy may conduct interviews with those Consultants whose proposal most closely matches the requirements of the RFP. Upon completion of the evaluation process, the most qualified Proposer will be contacted to finalize the Scope of Work and related terms of a professional services agreement. A draft agreement is attached. The approved contract will be subject to Council approval. The City of Cudahy reserves the right to reject any and all proposals should it be deemed in its best interest to do so.

**VIII. General Terms and Conditions**

**Clarification of Information**

The City reserves the right to request clarification of information submitted and to request additional information from any Proposer.

**Proposal Validity**

The Proposer's pricing shall be valid for a minimum of 90 days.

**Proposal Acceptance**

The City reserves the right to accept all or a portion of the Proposer's proposal. The City reserves the right to offer the award to the overall best Proposer or split the award amongst multiple Proposers.

**Proposal Preparation Costs**

The City shall not be responsible for any costs incurred by the Proposer in preparing, submitting or presenting its response to the RFP.

**Withdrawal of Proposal before Closing**

Any Proposer may request the withdrawal of their submitted proposal, either in person, by telephone, or written request, at any time prior to the scheduled closing date and time. Upon receiving the written request to withdraw any proposal, City of Cudahy will consider the Proposer's proposal null and void. Withdrawal of Proposer's proposal will not prejudice Proposer's re-submittal for this or any future proposal(s).

**Interpretation of Documents**

During the proposal solicitation period should a Proposer find discrepancies or omissions in the specifications of the RFP or should the Proposer be in doubt as to their interpretation, the Proposer shall immediately notify the City Manager. Should it be found necessary, an addendum will be sent to all Proposers. Any addenda shall form a part of this solicitation and shall become a part of the submitted proposal.

**Public Record**

Upon award, the results of the RFP process will become available. Be advised that all information contained in proposals submitted in response to this solicitation shall be subject to the California Public Records Act (government Code Section 6250 et seq.), and information use and disclosure are governed by this act.

**Liens**

The Proposer shall pay all sums of money that become due from any labor, services, materials or equipment furnished to Proposer on account of said product/services to be furnished as a result of the RFP and that may be secured by any lien against the City of Cudahy. The Proposer shall fully discharge such lien no later than the time of performance of the obligation.

**Federal, State and Local Laws**

The Proposer and all sub-contractors shall comply with all applicable federal, state and local laws, rules, and regulations.

**Contract Document**

The contract resulting from acceptance of a proposal by the City shall be in a form supplied and approved by the City. (See attached draft contract.)

# DRAFT



2019?

PROFESSIONAL SERVICES AGREEMENT  
(Engagement: Human Resources Services)  
(Parties: City of Cudahy and \_\_\_\_\_)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2019? (hereinafter, the "Effective Date") by and between the CITY OF CUDAHY, a municipal corporation (hereinafter, "CITY") and \_\_\_\_\_. (hereinafter, "CONSULTANT"). For the purposes of this Agreement, CITY and CONSULTANT may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONSULTANT interchangeably as appropriate.

WHEREAS, the City wishes to engage CONSULTANT to provide the following specialized services: Human Resources Services; and

WHEREAS, the CITY'S in-house personnel is presently unable to perform the specialized services and tasks contemplated under this Agreement; and

WHEREAS, CONSULTANT possesses the specialized training, skill, expertise and experience required to perform the services contemplated under this Agreement; and

WHEREAS, CONSULTANT agrees to perform the various services and tasks set forth under this Agreement subject to the terms and conditions set forth herein; and

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

I.  
ENGAGEMENT TERMS

- 1.1 SCOPE OF SERVICES: Subject to the terms and conditions of this Agreement, CONSULTANT agrees to provide the following task and services as more particularly described the Project Description, which is attached and incorporated hereto as **Exhibit "A"** (hereinafter, the "Scope of Services"). CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services. For the purposes of this Agreement, the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term "Work."
- 1.2 TERM: This Agreement shall have a term of one (1) year commencing from the Effective Date of this Agreement ("Initial Term"). Following the conclusion of the Initial Term, the Agreement may be extended subject to the same terms and conditions set forth herein for a maximum of two (2) one-year extension terms, in the sole and absolute discretion of CITY, provided CITY issues

written notice of its intent to so extend the Agreement no less than thirty (30) calendar days prior to the expiration of the Initial Term or any subsequent extension term unless the Agreement is otherwise terminated as provided under Section 5 below. Nothing in this Section shall operate to prohibit or otherwise restrict the CITY's ability to terminate this Agreement at any time for convenience or cause.

1.3 COMPENSATION:

- A. CONSULTANT shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule (hereinafter, the "APPROVED RATE SCHEDULE") which is found in **Exhibit "A."**
- B. CONSULTANT agrees that CONSULTANT shall perform the Services during the course of the term set forth in Section 1.3(A), above. CONSULTANT's total compensation for the performance of all Services under this Agreement shall not exceed \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) (hereinafter, the "Not-to-Exceed Sum") per annum, unless such added expenditure is first approved by the CITY acting in consultation with the City Manager. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to expiration of the Initial Term, or any approved extension thereof, CITY may suspend CONSULTANT's performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY approved amendment to the compensation terms of this Agreement. CITY shall be under no obligation to compensate CONSULTANT for sums in excess of such Not-to-Exceed Sum.

1.4 PAYMENT OF COMPENSATION: Compensation shall be paid to CONSULTANT in monthly basis for all services and tasks performed by CONSULTANT during the preceding month. At the end of each month during the term of this Agreement, the CONSULTANT shall submit to CITY a monthly itemized statement(s) lists and reasonably describes the specific services rendered and/or tasks performed and the number of personnel hours devoted to such effort; the date(s) upon which such services and/or tasks were performed; and the name of the person(s) performing the service or task along with their applicable hourly billing rate. Within fifteen (15) calendar days of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

1.5 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Services, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other Work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

II.

PERFORMANCE OF AGREEMENT

2.1 CITY'S REPRESENTATIVE: The CITY hereby designates the City Manager (hereinafter, the "CITY Representative") to act as its representative for the performance of this Agreement. The CITY Manager shall be chief City Representative. The CITY Representative or his/her designee shall act on behalf of CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representative or his/her designee.

2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates \_\_\_\_\_ to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.

2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and shall be available to CITY staff and the CITY Representative at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representative or its designees.

2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including, but not limited to, subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendar days from the date of discovery or such other extended period of time authorized by the CITY Representative in writing and in her sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience

necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.

2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the duration of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.

2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representative to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONSULTANT and shall not be reassigned to perform any of the Work.

2.8 OUTSIDE EMPLOYMENT: In its written personnel policies, CONSULTANT shall include the following provisions governing outside employment of its employees:

- A. Such employment shall not interfere with the efficient performance of the employee's duties in the program of this Agreement;

- B. Such employment shall not involve a conflict of interest or an appearance of conflict with the employee's duties in the program of this Agreement;
- C. Such employment shall not involve the performance of duties which the employee should perform as part of his employment in the program of this Agreement; and
- D. Such employment shall not occur during the employee's regular or assigned working hours in the program of this Agreement, unless, during the entire day on which such employment occurs, the employee is on vacation, compensatory leave or leave without pay.

CONSULTANT shall establish effective procedures to enforce these provisions and must provide specific procedures regarding outside employment of its full-time personnel whose duties are not readily confined to a standard workday or workweek. These personnel include, but are not limited to, Executive Directors and other employees whose responsibilities may require them to be available for duty during evenings or on weekends.

- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor 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 expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

### III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
  - B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
  - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.

- D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representative is authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.
- 3.6 VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any Work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

#### IV. INDEMNIFICATION

- 4.1 The Parties agree that CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "CITY Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the CITY Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter

into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.

- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.6 CITY does not, and shall not waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.

## V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days' prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in section 6.1 below, and other

information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

## 5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation or service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), or to comply with any applicable state, federal, or local law an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT shall cure the following Events of Defaults within the following time periods:
- i. Within ten (10) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 10-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 10-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.i. that exceeds seven (7) calendar days from the end of the initial 10-day cure period; or
  - ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT shall include, but shall not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of Services; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation

as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) CITY's discovery that a statement representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
  - i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
  - ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;
  - iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
  - iv. The CITY may exercise any other available and lawful right or remedy.

CONSULTANT shall be liable for all legal fees plus other costs and expenses that CITY incurs upon a breach of this Agreement or in the CITY's exercise of its remedies under this Agreement.

G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

## VI. MISCELLANEOUS PROVISIONS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, designs, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT shall require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.

6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent of disclosure as legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

6.3 FALSE CLAIMS ACT: CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.

6.4 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

**CONSULTANT:**

Company Name  
Address  
City, State, Zip Code  
Attn:  
Phone:  
Fax:

**CITY:**

City Manager  
c/o Deputy City Clerk – Richard Iglesias  
City Hall  
5220 Santa Ana Street  
Cudahy, California 90201  
Phone: (323) 773-5143

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

- 6.5 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as are reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.6 SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements, indemnification and federal equal opportunity and nondiscrimination laws set forth in Section 2.9.
- 6.7 CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONSULTANT.
- 6.8 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.10 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.
- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.19 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations, or other agreements, whether oral or written, made by any Party, which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.
- 6.20 COUNTERPARTS: This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**CITY OF CUDAHY**

By: \_\_\_\_\_  
Jose E. Pulido, City Manager

**CONSULTANT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Office of the City Attorney

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

**EXHIBIT B  
CONSULTANT'S COST PROPOSAL**

**EXHIBIT C  
REIMBURSEMENT INVOICE SAMPLE**

**EXHIBIT D**  
**ACTIVITY REPORT SAMPLE**

**EXHIBIT E**  
**CERTIFICATES OF INSURANCE**