



# City of Lindsay

DEPARTMENT OF CITY SERVICES

P.O. Box 369 — Lindsay, California 93247 — 150 North Mirage Ave.  
559 • 562 • 7102  
559 • 562 • 5748 fax



**Request For Qualifications (RFQ)  
CONSTRUCTION MANAGEMENT SERVICES FOR OLIVE BOWL AND KAKU  
RENOVATION PROJECT**

**Mark envelope:** RFQ No. 24-07 Construction Management and Resident Engineer Services for the City of Lindsay, OLIVE BOWL AND KAKU RENOVATION PROJECT

**Submittal:** One (1) bound original must be received on or before: **3:00 pm on Monday, September 16, 2024.**

**SUBMITTALS** will be received at the City of Lindsay Clerk’s Office, located at 251 E Honolulu St, Lindsay, CA 93247 until 3:00 pm. September 16, 2024 for:

*Responses received after the time and date stated above shall be returned unopened to the proposer.*

**Inquiries:**

Direct questions for clarification of this Request for Proposal document should be submitted in writing via email to [mmendoza@lindsay.ca.us](mailto:mmendoza@lindsay.ca.us). **Deadline to submit questions regarding this RFQ via email is September 11, 2024**

City of Lindsay Request for Proposal No.24-07

**TERMS AS USED IN THIS DOCUMENT**

- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Consultant.

No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity leading to the award of a contract.

The right is reserved by the City of Lindsay to reject any or all responses, to waive any irregularities or informalities not affected by law, to evaluate the SUBMITTALS submitted and to award the contract according to the proposal which best serves the interests of said City.

Publication Dates: The Porterville Recorder, September 3, 2024



## I. INTRODUCTION

### A. Information

The City of Lindsay invites qualified construction management firms to submit their Qualifications for comprehensive services related to the Olive Bowl and Kaku Renovation Project. This project is an essential community improvement initiative that involves significant upgrades to the baseball/softball fields park facilities. The successful firm will manage all aspects of the construction process, ensuring the project is completed on time, within budget, and to the highest standards. The project is funded by several state grants, underscoring the importance of rigorous project oversight and adherence to regulatory requirements.

One (1) bound original must be received on or before: **September 16, 2024**

The City of Lindsay are issuing this Request for Qualifications (RFQ). Unless otherwise directed, all communications regarding this RFQ should be directed to the City of Lindsay. To prevent misinterpretations, the city requires that all questions be sent by e-mail to [mmendoza@lindsay.ca.us](mailto:mmendoza@lindsay.ca.us).

Any revisions to the RFQ will be issued and distributed as addenda. Respondents are specifically directed not to contact any other City personnel for meetings, conferences or technical discussions related to this RFQ. Failure to adhere to this policy may be grounds for rejection of SUBMITTALS.

### B. Background

The City of Lindsay plans to renovate the Olive Bowl and Kaku facilities. This project aims to revitalize the facilities, ensuring they meet current standards and serve the community's needs. The project will include the rehabilitation and expansion of the existing Olive Bowl/Kaku Park.

The design and construction of this project will be funded by State of California Parks Department Prop. 68, Clean California (CALTRANS) grants and the American Rescue Plan Act (ARPA). All state regulations will be followed during all phases of the project.

The project has been broken into 3 phases. Phase 1 was included as part of the base bid, Phase 3 was added as an additive alternate A, and Phase 2 as additive alternate B. The City Council awarded Base Bid-Phase 1 only and authorized Staff to value engineered base bid and use any identified savings to make improvements within Phase 3. A site plan showing the phases are included in this RFQ.

### C. Order of and Timeline for Completion of Work

The Contractor plans to begin September 23, 2024. Construction time will be 270 calendar days.

## II. SCOPE OF WORK

The City of Lindsay is seeking comprehensive construction management services for the renovation and expansion of Olive Bowl-Kaku Park. This project aims to modernize the park's facilities, upgrade existing infrastructure, and introduce new amenities while ensuring the project is completed efficiently, on schedule, and within budget. The construction management firm will oversee all phases of the project, ensuring compliance with project specifications, quality standards, and regulatory requirements.

### **Phase 1: Active Sports and Recreation Area Scope:**

**Construction/Installation Management:**

- Oversee the construction of one lighted baseball field and two softball fields, ensuring compliance with design specifications, safety standards, and ADA requirements.
- Manage the installation of playground equipment, ensuring it meets ADA compliance and all safety requirements.
- Coordinate the development of walking paths, ensuring they align with approved grading and site plans.
- Supervise the installation of a new restroom/concession/storage building, managing all aspects from foundation work to final finishes. City of Lindsay will provide the building to the Contractor, therefore, coordination between the two are required.
- Oversee infrastructure upgrades, including the installation of the electrical work, irrigation well, irrigation systems, tree planting, lighting, and construction of a basketball court.
- Manage the development of picnic areas and a detention basin, ensuring all work meets environmental, sustainability, and regulatory standards.

**Phase 2: Park Expansion (Additive Alternate B - Parking Lot Improvements) Scope:**

Not awarded. No pricing Needed.

**Phase 3: North Park Improvements (Additive Alternate A) Scope:**

This phase was not awarded to the lowest responsible bidder, however, the City Council has authorized Staff in conjunction with the contractor to Value Engineered Phase 1 and apply those savings in Phase 3 as the funding allows.

**Construction/Installation Management:**

- Oversee all improvements shown on the plan for the North End Park, including the construction of a playground, electrical work, utilities, picnic areas, grading, drainage, site furnishings, pavement, planting, and irrigation.

**Construction Management Deliverables and Support Services:**

- Provide administrative, management and related services as required to coordinate work of the Contractor with the activities and responsibilities of the Construction Manager, the Owner, and his consultants to complete the project in accordance with the Owner's objectives for costs, time and quality. Provide sufficient organization, personnel and management to carry out the requirements of this Agreement.
  - a) Prepare agendas, schedule and conduct pre-construction, construction and progress meetings as necessary to discuss such matters as procedures, program problems and scheduling. Prepare and promptly distribute minutes within 24 hours. The Construction Manager shall meet with the Owner, the Contractor, and (as needed) the Design Consultant periodically (probably weekly) to review the status of the work and to discuss issues of importance to the project.
  - b) Consistent with the project construction, review the contractor's Project Construction Schedule, including activity sequences and durations, critical path items, allocation of labor and materials, processing of shop drawings, product data, and samples, and the delivery of products requiring long lead time procurement to assure that the Owner's occupancy requirements are met.
  - c) Endeavor to achieve satisfactory performance from the contractor. Recommend courses of action to the Owner when requirements of a contract are not being fulfilled, and when non- performing party does not take satisfactory corrective action.
- Project Coordination: Continuous coordination with stakeholders, including city officials, subcontractors, and utility providers. Facilitate regular project meetings to align goals and timelines.

- **Quality Assurance:** Implement and oversee a comprehensive quality assurance program, ensuring that all work meets the required specifications and standards.
  - Provide a Qualified SWPPP Practitioner (QSP) to oversee the SWPPP (Provided by the contractor)
  - Provide a Certified Playground Inspector.
- **Safety Management:** Ensure that all construction activities comply with OSHA standards and local safety regulations, conducting regular site safety audits.
- **Schedule Management:** Develop and maintain a detailed project schedule, monitor progress, and implement corrective actions as needed.
- **Cost Control:** Manage the project budget, track expenditures, manage change orders, review contractor progress billings, and ensure cost-effective use of resources.
- **Recommend necessary or desirable changes to the Owner, review requests for changes, assist in negotiating Contractor's proposals, process changes through the City, submit recommendations to the Owner, and if they are accepted, prepare Change Orders for the Owner's signature and the Owner's authorization.**
- **Consult with the Owner's Consultants if the Contractor requests interpretations of the meaning and intent of the drawings and specifications, and assist in the resolution of questions which may arise.**
- **Compliance:** Ensure full compliance with state and local regulations, including CEQA clearance and adherence to all permitting requirements.
- **The Construction Management firm will appoint one of their staff to act as the Labor Compliance Officer. The Labor Compliance Officer shall insure adherence to all labor laws and funding requirements including testing, documenting, and reporting. Labor compliance shall include monitoring and documenting equal opportunity requirements, wage rates, and work hours. All specified posters, notices, wage determinations, etc. shall be posted on the job site. The CM/RE shall verify and enforce the prevailing wage requirement of the project.**
- **Documentation:** Maintain thorough documentation of all project activities, including daily logs, meeting minutes, RFI responses, submittal approvals, and inspection reports. Prepare and submit regular progress reports to the city.
- **Final Inspections and Closeout:** Coordinate and manage final inspections, ensure completion of punch list items, and oversee the preparation of as-built drawings. Facilitate the project closeout process, including obtaining all necessary approvals and certifications.
- **Sustainability Goals:** Ensure that all construction activities align with the City's sustainability goals, particularly in relation to water and energy efficiency.

### **III. Submittal Requirements**

#### **A. General Information**

- **Main Office Information:** Provide the name and address of the firm's main office.
- **Team Resumes:** Include resumes for all individuals who will be assigned to the project design team. Each resume should detail relevant experience in similar projects, and clearly identify the specific individuals responsible for the design work. The project manager or design engineer must be a registered civil engineer with experience in similar projects.
- **Project Approach Statement:** Provide a brief statement outlining how the firm will undertake the project and explaining why the firm should be selected.
- **Similar Project Experience:** List similar projects the firm has completed in the past five years, including a brief description of each project and the specific work performed by the consultant.
- **References and Referrals.**
- **Sealed Fee Proposal:** Submit a sealed fee proposal for the project under a separate cover, using the Caltrans LAPM 10-H fee schedule.

### **IV. Proposal Review Process**

## A. Evaluation

Selection of the successful respondents shall be generally based on the information provided by the proposer in response to the Request for Qualifications.

The process for selection shall occur in the following sequence:

1. Review Proposals.
2. Identify the best qualified firm per the Weight of Criteria.
3. Evaluation of the Proposed Fee submitted. A separate sealed envelope shall be included in the Qualifications submittal. The fee amount will only be disclosed to the selection committee after the weighted criteria evaluation has been completed.
4. Recommend Council project award.

A project Selection Committee, as deemed necessary, will be formed to evaluate qualifications and the proposals and to make recommendations to the Lindsay City Council. This committee may consist of representatives of the user department, members of the community, members of the Council, local agencies and the Administration Department, and may include a representative knowledgeable in construction services from outside of the community. Composition and creation of this committee is at the sole discretion of the City. Names of the Committee members will not be released prior to the time for interviews.

The Committee will review the proposals for format to ensure conformance with the requirements of the RFQ. Consultant selection shall be based on the information provided in the proposals received in response to the RFQ.

The best qualified firm will be determined by the highest number of points obtained per the criteria set below.

## B. Criteria

The Committee will address the following criteria in evaluation of proposals in order to gauge the ability of a consultant to perform the contract as specified. The same general criteria will be used to judge both the proposal and the presentation, should the City choose to conduct interviews with short-listed firms.

<b>Criteria</b>	<b>As Demonstrated By:</b>
• Merit of Proposal/Presentation	Proposal thoroughness and approach.
• Knowledge and Expertise	Capability of personnel, firm qualifications and experience. Adequacy of staff to perform the work.
• Understanding of Project	Proposer's approach to providing the required services.
• Record of Past Performance	References. Ability to work effectively with City staff, other public agencies and related parties.

- Demonstrated ability to deliver projects timely and on budget.
- Experience with projects of similar scope.
- Knowledge of Local Conditions      Project work in Tulare, Kings, and/or Fresno County.
- Reasonableness of Cost              Total price included in Proposed Fee Schedule.

**Weight of Criteria**

<u>Criteria</u>	<u>Weight</u>
• Merit of Proposal/Presentation	15
• Knowledge and Expertise	25
• Understanding of Project	20
• Record of Past Performance, References	25
• Knowledge of Local Conditions	10
• Reasonableness of Cost.	5

Prior to the award of contract, the City must be assured that the proposer selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with the skills required, equipment/materials and financial resources sufficient to provide services called for under this contract. If, during the evaluation process, the City is unable to assure itself of the proposer’s ability to perform under the contract, if awarded, the City has the option of requesting from the proposer, any information that the City deems necessary to determine the proposer’s capabilities. If such information is required, the proposer will be notified and will be permitted three (3) working days to submit the requested information.

**C. Award of Contract**

The City of Lindsay reserves the right to reject any or all proposals, to waive any informality in any proposal, to sit in act as sole judge of the merit of each response submitted, to select a consultant, and to award in any manner which is more favorable to the City of Lindsay. The successful firm will be required to execute a contract with the City of Lindsay. A Draft Agreement has been included in this RFQ to alert proposers to the provisions generally found in City contracts. The Draft Agreement may be altered from the enclosed form at the discretion of the City and without notice to consultant prior to award of contract. The City does not guarantee that the Final Agreement will duplicate the enclosed Draft Agreement.

**D. Selection and Schedule**

The City of Lindsay will select a consultant based on the SUBMITTALS received and may request interviews with the most qualified candidates. Once a consultant is selected, the city will negotiate fees. If reasonable fees cannot be negotiated with the most qualified firm, the city will negotiate with the next most qualified firm. The selected firm must be licensed to perform the required services in California.

RFQ Available to the public.....August 30, 2024  
All questions must be received by 1:00 p.m. ....September 11, 2024  
RFQ due at 3:00 pm @ City Hall .....September 16, 2024  
Council awards RFQ proposal.....September 24, 2024

**V. Disclaimers**

This RFQ does not commit the City of Lindsay to enter into a contract, nor does it obligate the City to pay for any costs incurred in the preparation and submission of SUBMITTALS. The city may investigate the qualifications of any consultant under consideration, require confirmation of information furnished by a consultant, and/or require additional evidence of qualifications to perform the work described in this RFQ. All SUBMITTALS will be subject to public disclosure as required by the California Public Records Act.

The city reserves the right to:

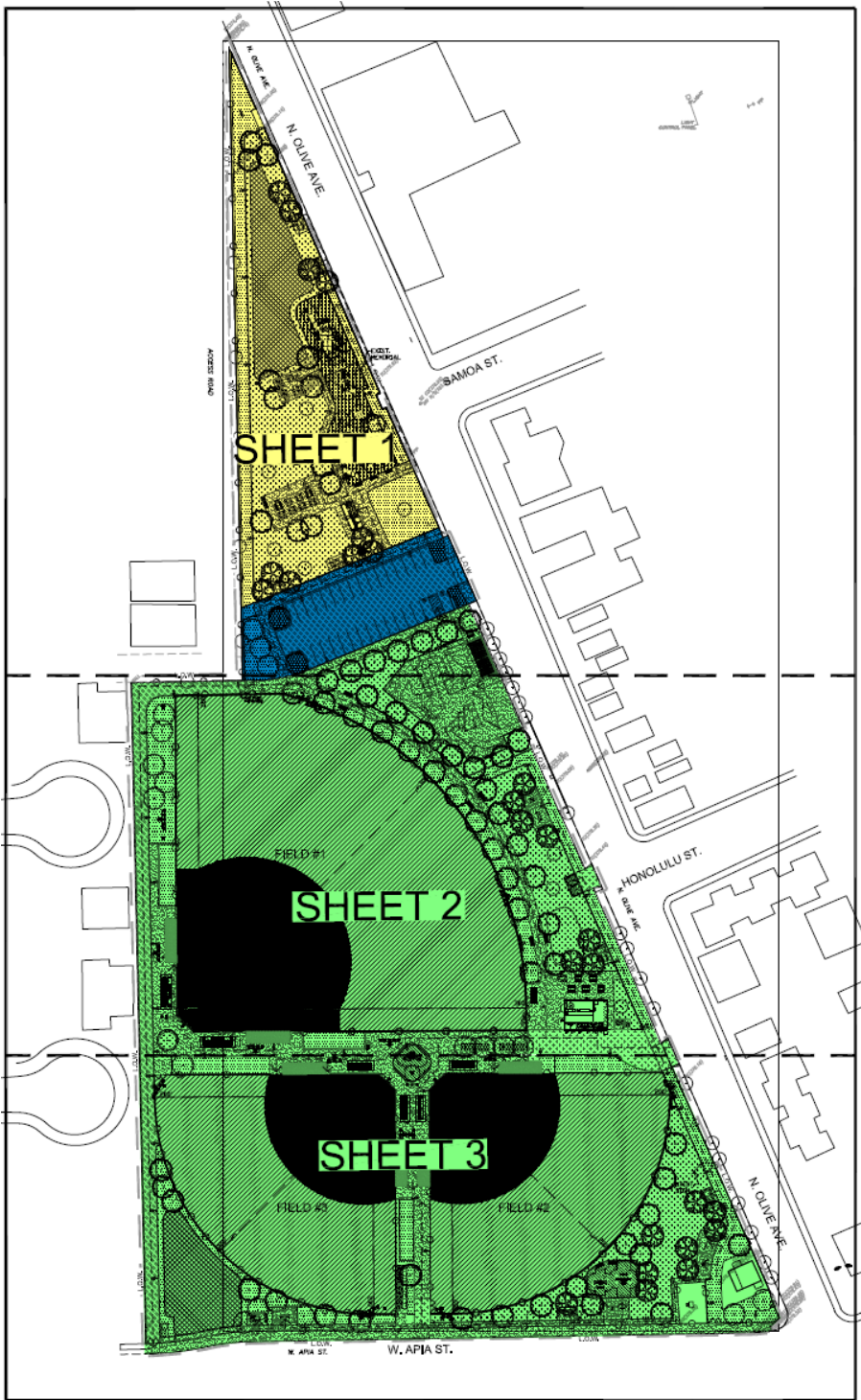
- Reject any or all SUBMITTALS.
- Issue subsequent Request for SUBMITTALS.
- Cancel the request if deemed necessary.
- Alter the selection process dates.
- Remedy technical errors in the RFQ process through addendums.
- Approve or deny the use of any particular contractors.
- Establish a short list of consultants eligible for interviews.
- Accept SUBMITTALS other than the lowest bidder.

**VI. Other Requirements**

Consultant shall be required to possess, at his/her own expense, a valid and current City of Lindsay Business License.

**VII. Attachments**

# PROJECT PHASING SITE PLAN



## SYMBOLS LEGEND:

- BALL FIELD TURF
- STABILIZED D.G.
- INFIELD STABILIZED D.G.
- 4" CONCRETE
- 1" CONCRETE
- A.C. PAVEMENT
- RUBBERIZED SURFACING
- GENERAL TURF
- PLANTING AREA
- BASIN TURF
- NEW TREE
- EXISTING TREE
- SHEET MATCHLINE
- ADA PATH OF TRAVEL

## OLIVE BOWL RE-PACKAGE FEBRUARY 2023

- Phase 1 - Ballfield Park Improvements:** One (300') Premiere Lighted Ballfield, Two (200') Lighted Ballfields, Concession/Restroom, Skate Park, Small Playground, Picnic Areas, Fitness Equipment, Detention Basin
- Phase 2 - Lighted Parking Lot Improvements**
- Phase 3 - North Park Improvements:** Lighting, Restroom, Playground, Picnic Areas, Detention Basin





**SAMPLE CONTRACT - subject to changes**

**AGREEMENT FOR PROFESSIONAL SERVICES**  
(NOT INCLUDING ARCHITECTURE OR ENGINEERING)

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** (hereinafter referred to as "Agreement") is made by and between the **City of Lindsay**, a charter city and municipal corporation of the State of California (herein "CITY") and \_\_\_\_\_, (herein "CONSULTANT") wherein Consultant agrees to provide the City and City agrees to accept the services specified herein in connection with the Project.

This Agreement, entered into this \_\_\_\_\_, 2024, by and between the **City of Lindsay** and \_\_\_\_\_.

A. WHEREAS, the CITY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

B. WHEREAS, the CONSULTANT represents it is qualified and willing to provide such services pursuant to terms and conditions of this Agreement:

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

**1. CONTRACT ADMINISTRATOR.** City's Contract Administrator will administer this Agreement on behalf of City Consultant's Contract Administrator is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

**2. NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered to the addresses shown on the cover page or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, facsimile or email, shall be deemed to be received five (5) days following their deposit in the U.S. mail or upon receipt if sent by facsimile.

**3. EXHIBITS.** Attached to this Agreement are the following Exhibits, which are incorporated herein by this reference. Consultant shall initial each Exhibit.

Exhibit A Description of Scope of Services to be performed by Consultant. Exhibit B Fee  
Schedule for the services described in Exhibit A.

Exhibit C Project Schedule for performance of the Services.

In addition to these Exhibits, the Cover Page attached to this Agreement is incorporated herein by this reference.

**4. SCOPE OF SERVICES.**

A. Consultant shall provide the services, and make submittals to City in accordance with Exhibit A and the schedule in Exhibit B, subject to the direction of the City's Contract Administrator, as provided from time to time.

B. Consultant's services shall conform to the Project Schedule and City's budget for the Project.

**5. TERM.**

A. Consultant shall commence performance within five **calendar days** of City's written

notice to proceed, and diligently prosecute the Services to completion in accordance with the schedule in Exhibit A, unless otherwise directed by City or unless earlier terminated.

**B.** Consultant shall complete the various tasks involved in the PROJECT no later than the date shown on the Cover Page. Time extensions shall be granted only for good cause as determined at the sole discretion of the CITY.

## **6. COMPENSATION OF CONSULTANT.**

### **A. Basic Services.**

**1.** City shall pay Consultant for full and faithful performance of Basic Services a fee that is not to exceed the Not-to-Exceed Amount without the express authorization of the City Council. The Not-to-Exceed Amount includes all Reimbursable Expenses required for performance of the Basic Services.

**2.** Progress payments for Basic Services for each phase of the work shall be made as shown in Exhibit B.

**3.** The City shall make monthly payments for completed Services performed on the Project. The amount that will be approved and paid for each Task shall not exceed the percent complete of that Task.

**4.** Payments for various items of services may be modified with approval of City so long as payments do not exceed the Not-to-Exceed Amount.

**5.** This fee for Basic Services shall include the fees for all subconsultants.

### **B. Additional Services.**

**1.** Should services be requested by City or proposed by Consultant which are considered to be beyond the Scope of Services (Exhibit A), the Consultant shall provide a written request for consideration of Additional Services to the City Contract Administrator. The City Contract Administrator will make due consideration of the request for Additional Services. Consultant shall not provide Additional Services until Consultant has received written approval from the City Contract Administrator to perform same. Should the Consultant elect to proceed prior to receiving written approval by the City or Additional Services, the Consultant does so at Consultant's own risk.

**2.** City shall pay Consultant for authorized Additional Services on an hourly basis, in accordance with the schedule of fees attached hereto as Exhibit B. City shall pay only for Additional Services authorized by the City Council or designee in writing or requested verbally by City and confirmed in writing by Consultant within five (5) working days.

**3.** Consultant and City shall agree upon an estimated not-to-exceed cost for any proposed Additional Services or, in the case of a verbal request, Consultant shall provide City with a written estimated not-to-exceed cost for such Additional Services at least one (1) working day prior to commencing the additional Services. In no event shall City pay for Additional Services made necessary by Consultant's errors or oversights.

### **C. Reimbursable Expenses.**

City shall reimburse Consultant for Reimbursable Expenses Consultant incurs in the course of performing Services under this Agreement. The Not-to-Exceed Amount includes Reimbursable Expenses required for Basic Services. Reimbursable Expenses include only the items listed in Exhibit B. Travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the CONSULTANT.

**D. Payment Procedures.**

1. Consultant shall submit written applications for progress payments in a form satisfactory to City on or before the first day of each month on account of the Basic Services, Additional Services and Reimbursable Expenses completed during the preceding month. Payment applications for Additional Services shall identify each person performing services, the time each person spends on each task (in units not to exceed one quarter hour) and shall be based on the rates in Exhibit B. Payment Applications for Reimbursable Expenses shall be supported by invoices or such other documents as City may reasonably request.

2. Within thirty (30) days after receipt of each application for progress payment, City shall verify the accuracy of the progress payment application, correct the charges where appropriate, and make payment to Consultant in an amount equal to the amount of such application, as verified or corrected by City. No payment made hereunder prior to completion and acceptance of the Project shall be construed as evidence of acceptance of any part of the Services. City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services past the milestones established above or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement on account of payment disputes with City, provided that City continues to make payment of undisputed amounts.

3. If City disagrees with any portion of a billing, the City shall promptly notify Consultant of the disagreement, and the City and the Consultant shall attempt to resolve the disagreement. City's payment of any amounts shall not constitute a waiver of any disagreement and City shall promptly pay all amounts not in dispute.

4. Consultant shall maintain complete and accurate records of the number of hours worked by persons and subconsultant, and Reimbursable Expenses, on the Project during each phase under this Agreement. All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified and readily accessible. All accounting records shall provide an understandable breakdown of costs charged to this Agreement.

7. **INDEPENDENT CONTRACTOR.** The services to be provided to the City as set forth in this Agreement shall be provided by Consultant as an independent contractor as defined in Labor Code 3353, under the control of the City as to the result of the work but not the means by which the result is accomplished, and nothing herein contained shall be construed to make Consultant an agent or employee of the City while providing these services. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

**8. PERFORMANCE STANDARDS.**

**A. Compliance with laws.**

1. Consultant shall (and shall cause its agents and contractors), at its sole cost and expense, to comply with all City, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Project and this Agreement. Any corrections to Consultant's instruments of professional service which become necessary as a result of the Consultant's failure to comply with these requirements shall be made at the Consultant's expense.

2. Should the requirements referenced in subparagraph 1 above change after the date of design or drawing preparation, Consultant shall be responsible for notifying City of such change in requirements. Consultant will bring the instruments of professional service into conformance with the newly issued requirements at the written direction of City. Consultant's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

3. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

**B. Standard of Performance.** Consultant represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Consultant shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Consultant is engaged. All products of whatsoever nature which Consultant delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Consultant's profession. Consultant shall correct or revise any errors or omissions at the Contract Administrator's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement.

**C. Professional Seal.** Consultant shall have documents stamped by registered professionals, at Consultant's cost, for the disciplines covered by Consultant's instruments of professional service when required by prevailing law, usual and customary professional practice, by City, or by any governmental City having jurisdiction over the Project.

**9. TAXES.** Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

## **10. CONFLICT OF INTEREST.**

**A.** Consultant understands that its professional responsibility is solely to City. Consultant warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Consultant shall not knowingly, and shall take reasonable steps to ensure that, it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person, Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

**B.** Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

**C.** Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

**1.** Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

**2.** Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

**11. RESPONSIBILITIES OF CITY.** City shall provide all information requested by Consultant that is reasonably necessary in performing the Services described herein.

## **12. OWNERSHIP OF DOCUMENTS.**

**A.** The plans, specifications, estimates, programs, reports, models, data, and other material prepared by or on behalf of Consultant under this Agreement including all drafts and working documents, and

including electronic and paper forms (collectively the "Documents"), shall be and remain the property of the City, whether the Project is completed or not, and to the extent that Consultant has been paid for satisfactorily completed Services. Consultant shall deliver all Documents to City upon (1) the substantial completion date of the Project, (2) the date of termination of this Agreement for any reason, or (3) at any time requested by City, upon five (5) days written notice.

**B.** The Documents may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable in connection with completion and maintenance of, and addition to, the Project, without further employment of or payment of any compensation to Consultant; provided, however, that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another Consultant to use, such Documents to complete the Project, City agrees to release Consultant from any responsibility for the conformance of the incomplete portions of the Project to the Documents and to hold Consultant harmless from any and all liability, costs, and expenses (including reasonable legal fees and disbursements), relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of Consultant, or anyone for whose acts it is responsible, in preparation of the Documents. Consultant shall not be responsible for deficiencies solely attributable to modifications to the Documents performed by others, or that arise from use of the Documents on a site other than that shown in the Documents.

**C.** Consultant retains the copyright in and to the intellectual property depicted in the Documents subject to City's rights and licenses set forth in this Agreement. City's ownership interest in the Documents includes the following single, exclusive license from Consultant for the Project: Consultant, for itself, its employees, heirs, successors and assigns, hereby grants (and if any subsequent grant is necessary, agrees to grant) to City an irrevocable, perpetual, royalty-free, fully paid-up, sole and exclusive license and right to use and exercise any and all of the copyrights or other intellectual property rights that Consultant may author or create, alone or jointly with others, in or with respect to the Documents, including without limitation all drawings, designs, graphic representations, and data. City's license shall include the right to sublicense, shall be for all purposes with respect to each right of copyright, and shall be without restriction.

**D.** Consultant shall cause to be included in all subcontracts and agreements with respect to the design and construction of the Project that Consultant negotiates, language which is consistent with this Section 12.

**E.** All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the City to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

**13. RECORDS, AUDIT AND REVIEW.** Consultant shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such records for at least three (3) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. City shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

#### **14. INDEMNIFICATION AND INSURANCE.**

**A.** Claims for Professional Liability. Consultant shall, with respect to all Services performed in connection with this Agreement, defend, indemnify, and hold the City, its elected and appointed officers, employees, and volunteers harmless from and against any and all claims, liability, loss, damage, costs, or expenses, including reasonable attorneys' fees, awards, fines, or judgments (collectively, "Claims"), arising from or relating to negligent acts, errors, or omissions in the performance of professional services by Consultant, its subconsultants, agents or employees. Consultant shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees.

**B.** Claims for Other Liability. Consultant shall, with respect to all Services performed in connection with this Agreement, defend, indemnify, and hold the City, its elected and appointed officers, employees,

and volunteers harmless from and against any and all liens and Claims by firms or individuals claiming through Consultant, and all Claims for compensation, the death or bodily injury to persons, injury to property, or other loss, damage, or expense arising from or related to the Services of Consultant , its subcontractors, agents or employees. Consultant shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees.

**C.** Claims Involving Intellectual Property. In addition to the obligations set forth in (A) and (B) above, Consultant shall indemnify, defend, and hold the City, its elected and appointed officers, employees, and volunteers, harmless against any Claim is alleged in which a violation of intellectual property rights, including but not limited to copyright or patent rights, that arises out of or relates to the Services of Consultant , its subcontractors, agents or employees. Consultant shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees.

**D.** Without limiting the AGENCY's right to indemnification, it is agreed that CONSULTANT shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

**1.** Workers' Compensation Insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000 per accident.

**2.** Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent Contractors' Liability (if applicable), in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.

**3.** Professional Liability Insurance coverage, including contractual liability, in an amount not less than One Million Dollars (\$1,000,000.00), and CONSULTANT shall maintain such coverage for at least four (4) years from the termination of this Agreement; and during this four year period, CONSULTANT shall use CONSULTANT'S best efforts to ensure that there is no change of the retroactive date on this insurance coverage.

**4.** Comprehensive Auto Liability coverage, including (as applicable) owned, non-owned and hired autos in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.

**E.** The City of Lindsay Risk Manager is hereby authorized to adjust the requirements set forth above in the event he/she determines that such adjustment is in the AGENCY'S best interest.

**F.** Each insurance policy required by this Agreement shall contain the following clauses:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the General Manager.

"It is agreed that any insurance maintained by the AGENCY shall apply in excess of and not contribute with insurance provided by this policy."Each insurance policy required by this Agreement, excepting policies for workers' compensation and professional liability, shall be endorsed to include the following clause:

"The AGENCY, its officers, agents, employees,, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured, performed under contract with the AGENCY."

**G.** Upon AGENCY's request, CONSULTANT shall deliver to the AGENCY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of AGENCY'S request, CONSULTANT SHALL PROVIDE TO the

AGENCY endorsements to the above- required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by the AGENCY, it shall be CONSULTANT'S responsibility to see that the AGENCY receives documentation acceptable to the AGENCY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. Also, the AGENCY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

**H.** In addition to any other remedies, the AGENCY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, the AGENCY may, at its sole option:

- 1.** Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- 2.** Order CONSULTANT to stop work under this Agreement and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- 3.** Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies the AGENCY may have and is not the exclusive remedy for CONSULTANT'S failure to maintain insurance or secure appropriate endorsements.

**I.** Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT'S or its subcontractor's performance of the work covered under this Agreement.

**J.** Indemnity from Others. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section.

City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

**K.** Limitation On Indemnity Obligations. Without affecting any of the rights of City under any provision of this Agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the sole or active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the sole, or active negligence of City.

**L.** Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Agreement does not relieve Consultant from the obligations of this Section 16. The obligations of this Section 16 shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

## **15. PERSONNEL.**



**A.** The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by the Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such services.

**B.** Continuity. Consultant shall make every reasonable effort to maintain stability and continuity of Consultant's Key Personnel assigned to perform the Services. Key Personnel are identified in Exhibit C. Consultant shall provide City with a minimum twenty (20) days prior written notice of any changes in Consultant's Key Personnel assigned to the Project, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

**16. NONEXCLUSIVE AGREEMENT.** Consultant understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the City desires.

**17. ASSIGNMENT.**

**A.** Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of City and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. In no event shall the CONSULTANT subcontract work in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing this particular type of work.

**18. TERMINATION.**

**A.** The City may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

**B.** If Consultant at any time refuses or neglects to prosecute its Services in a timely fashion or in accordance with the Project schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Consultant shall be in default.

**C.** If Consultant fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Documents (as defined in Section 9) or other materials (in paper and electronic form) prepared or used by Consultant in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

**D.** In the event City elects to terminate, City shall have the right to immediate possession of all Documents and work in progress prepared by Consultant, whether located at the Project, at Consultant's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses incurred by City in obtaining engineering services for the Project exceed such unpaid balance, then Consultant shall promptly pay to City the amount by which such expense exceeds the unpaid balance of the Not-to-Exceed Amount. The expense referred to in the previous sentence shall include expenses incurred by City in causing the services called for under this

Agreement to be provided by others, for attorneys' fees, and for any costs or damages sustained by City by reason of Consultant's default or defective work.

**E.** In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the Not-To-Exceed Amount which shall be calculated as follows:

(1) Payment for Services then satisfactorily completed and accepted by City, plus (2) Payment for Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Consultant, as approved by City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Consultant shall not be entitled to any claim or lien against City or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 6(E) shall be applicable in the event of a termination for convenience.

**F.** If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 22 and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

**19. DISPUTE RESOLUTION.** City and Consultant agree that disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

## **20. MISCELLANEOUS PROVISIONS.**

**A.** CONSULTANT covenants that he/she presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder.

**B.** CONSULTANT will not discriminate against any employee, or applicant for employment, because of race, color, religion, sex, marital status, or national origin. CONSULTANT will take action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, or national origin. Such action shall include, but not be 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.

**C.** The CONSULTANT agrees to adhere to the following:

**1.** CONSULTANT will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, *et seq.*, shall be used to determine the allowability of individual Project cost items and (b) all parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving Project funds as a contractor, subcontractor, or sub-grantee under this FTA shall comply with, Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

**2.** CONSULTANT assures that in the course of performing Project work, it will fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 *et seq.*)

**3.** CONSULTANT all of its subcontractors, if any, 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, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave and denial of pregnancy disability leave.

CONSULTANT shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*).

4. CONSULTANT shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. CONSULTANT shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three years from the date of final payment, to the California State Auditor, or any duly authorized representative of Department of Transportation and they shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and CONSULTANT shall furnish copies thereof if requested.

5. CONSULTANT will comply with the requirements of the Drug- Free Workplace Act of 1990 (Government Code section 8350 *et seq.*) and will provide a drug- free workplace.

6. Consultant shall be required to possess, at his/her own expense, a valid and current City of Lindsay Business Tax Certificate, prior to commencing work.

21. **PUBLICATION.** No report, information, or other data given or prepared or assembled by the CONSULTANT pursuant to this Agreement, shall be made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY. Notwithstanding the foregoing, however, the CONSULTANT shall not be required to protect to hold in confidence any confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.

22. **CITY NOT OBLIGATED TO THIRD PARTIES.** City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

23. **UNAUTHORIZED ALIENS.** Consultant hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

24. **COSTS AND ATTORNEY'S FEES.** The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

25. **SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

26. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

27. **REMEDIES NOT EXCLUSIVE.** Except as provided in Sections 22 and 23, no remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**28. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement. The foregoing notwithstanding, neither party shall be liable for damages or delays arising out of circumstances beyond its reasonable control.

**29. NO WAIVER OF DEFAULT.** No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

**30. ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

**31. SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**32. CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Tulare, if in state court, or in the federal court nearest to Tulare County, if in federal court.

**33. EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**34. AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Consultant is obligated, which breach would have a material effect hereon.

**IN WITNESS WHEREOF,** the parties have executed this Agreement to be effective on the date executed by City.

**CONSULTANT**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**CITY OF LINDSAY**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_