

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this _____ day of _____, 2019, by and between the City of Merced, a California Charter Municipal Corporation, State of California, as the implementer and recipient (“recipient”) of the Community Development Block Grant ("CDBG") Program and Home Investment Partnership Act ("HOME") Program (hereinafter referred to as "City") and TDA Consulting, Inc., a Corporation (hereinafter referred to as "Consultant").

WITNESSETH

WHEREAS, City is undertaking a project to prepare the 2020-2024 Department of Housing and Urban Development ("HUD") Consolidated Plan/Annual Action Plan and Analysis of Impediments to Fair Housing Choices; and,

WHEREAS, City has received a CDBG grant from HUD under Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5301 et seq.) (the "Act"); and,

WHEREAS, City has received a HOME grant under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended; and,

WHEREAS, the CDBG grant and HOME grant shall collectively be referred to as the "Grants;" and,

WHEREAS, Pursuant to such Grants, City is undertaking certain programs and services necessary for the planning, implementation, or execution of such a Community Development Program; and,

WHEREAS, City desires to engage Consultant to render certain services, programs, or assistance in connection with such undertakings of the Community Development Programs.

NOW, THEREFORE, in consideration of the Mutual Promises and covenants contained herein and for other good valuable consideration, the receipt are sufficiency of which is hereby acknowledge and agreed, the parties hereto do mutually agree as follows:

1. **SCOPE OF SERVICE.** Consultant shall provide the consultant services in accordance with the provisions of Exhibit "A," attached hereto and incorporated herein by reference.

2. **TERM OF AGREEMENT.** The services of Consultant are to commence on October 21, 2019, and end on June 30, 2020, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of this Agreement. Time is of the essence of this Agreement. The contact for City shall be the Housing Division at the City of Merced, 678 West 18th Street, Merced, California 95340.

3. **COMPENSATION.** Consultant shall be paid a total consideration of Seventy-Five Thousand Seven Hundred Thirty-Four Dollars and Sixty-Five Cents (\$75,735), for full performance of the services specified under this Agreement, in conformity with the approved program proposal and cost proposal document which is attached to this Agreement as Exhibit "B," and incorporated herein by reference. Funds will be dispersed in two (2) equal payments of Twenty-five Thousand Dollars (\$25,000.00), plus a third (3rd) and final payment of Twenty-five Thousand Seven Hundred Thirty-Five Dollars (\$25,735).

The First Draw can be requested after October 21, 2019, but all draws must be requested before June 30, 2020.

In every case, payment will be made subject to receipt of a requisition for payment from Consultant specifying and certifying that such expenses are in conformance with this Agreement, with backup documentation included, and that Consultant is entitled to receive the amount requisitioned under the terms of this Agreement.

Consultant shall notify City in writing of all authorized personnel who shall be empowered to file requests for payment pursuant to this Agreement.

4. **USE OF FUNDS.** Use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as amended), 24 CFR Part 570,

OMB Circulars A-21, A-87, and A-122, and other current regulations governing the CDBG Program and HOME Program, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. Said regulations are incorporated by reference. In addition, Consultant agrees to comply with other applicable laws, including Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Executive Order 11063.

Further, any funded activity must be designed or so located as to principally benefit low/mode rate income persons, aid in the prevention or elimination of slums or blight, or meet urgent community development needs, as defined in the program regulations.

5. AGREEMENTS WITH SUBRECIPIENTS.

A. Prior to disbursing any CDBG funds and HOME funds to a subrecipient, the recipient shall sign a written agreement with such subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds and HOME funds, including program income.

B. At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

1) Statement of work. The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient to effectively monitor performance under the agreement.

2) Records and reports. The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its record keeping and reporting requirements.

3) Program income. The agreement shall include the program income requirements set forth in 24 CFR 570.504 (c).

4) Uniform administrative requirements. The agreement

shall require the subrecipient to comply with applicable uniform administrative requirements, as described in 24 CFR 570.502.

5) Other program requirements. The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in Subpart K of 24 CFR Part 570, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at 24 CFR 570.604; and,

(ii) The subrecipient does not assume the recipient's Responsibility for initiating the review process under Executive Order 12372.

6) Conditions for religious organizations. Where applicable, the conditions prescribed by HUD for the use of CDBG funds and HOME funds by religious organizations shall be included in the agreement.

7) Suspension and termination. The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

8) Reversion of assets. The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds and HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds and HOME funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds and HOME funds in excess of \$25,000 is either:

(i) Used to meet one of the national objectives in §570.208 until five years after expiration of the agreement, or such longer period of time as determined appropriate by the recipient; or,

(ii) Is disposed of in a manner which results in the

recipient being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds and HOME funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with (i) above.

6. PROGRAM INCOME. Program income derived from the project, if any, shall revert to City for use in the CDBG Program and HOME Program.

7. ASSIGNMENT. Without written consent of City, this Agreement is not assignable by Consultant, either in whole or in part.

8. ALTERATION. No alteration or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

9. REVERSION OF ASSETS. If the Consultant becomes insolvent, all furniture and equipment purchased partly or totally with CDBG funds and HOME funds as well as any unused CDBG funds and HOME funds shall be returned to the City for disposition.

10. GENERAL TERMS AND CONDITIONS.

A. Consultant agrees to submit quarterly program status reports to City, and other reports as may be required.

B. Consultant agrees to maintain racial, ethnic, gender, head of household and family size data showing the extent to which these categories of persons have participated in, or benefited from, the project, and to provide such data in an activity report to City quarterly. The report shall include racial/ethnic, gender, and disability status of all clients served, consistent with "OMB Standards for Federal Data on Race and Ethnicity: HUD Policy Statement and Implementing Guidelines (dated August 13, 2002).

C. Consultant agrees to keep all necessary books and records, including property, personnel and financial records, in connection with the operations and services performed under this Agreement, and shall

document all transactions so that all expenditures may be properly audited.

D. Consultant agrees that City or any authorized representative has access to and the right to examine all records, books, papers or documents related to the project.

E. Consultant agrees to provide to City at Consultant' s cost, a certified audit performed by an accredited certified public accountant, of all funds received or utilized by Consultant, including the distribution of CDBG Funds and HOME funds for fiscal year 2019/2020 to be delivered to City by December 1, 2019.

F. Consultant hereby severally warrants that all project records, books, papers, and documents will be retained for a period of not less than four (4) years after the project terminates and grants City the option of retention of the project records, books, papers, and documents.

G. Consultant agrees to obtain all necessary permits for intended activities.

H. Advice of Prevailing Wage: Pursuant to Section 1781 of the Labor Code, Consultant/Contractor is advised that the work contemplated in this contract may be subject to the payment of prevailing wages and all other requirements of the Prevailing Wage Law. The prevailing wage of each job classification may be found by inquiry with the California Department of Industrial Relations. Consultant/Contractor shall comply with all laws related to the performance of public work including, but not limited to, the employment of apprentices pursuant to Section 1777.5 of the Labor Code, work day/week hours and overtime rates pursuant to Sections 1813 and 1815 of the Labor Code and the obligation set forth in Sections 1774-1776 of the Labor Code in regards to payment of prevailing wages and to provide the City of Merced and Department of Industrial Relations certified payrolls when required. A certified copy of all payroll records relative to this project shall be submitted to the City of Merced along with the related invoice. Receipt of certified payroll records is a prerequisite to receiving payment.

No Consultant/Contractor or sub-consultant/contractor may be listed

on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. No Consultant/Contractor or sub-consultant/contractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. All Consultants/Contractors or sub-consultants/contractors must furnish electronic certified payroll records to the Labor Commissioner. This requirement applies to all public works projects, whether new or ongoing. Consultant/Contractor is further advised that the work contemplated herein is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

I. Consultant hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, no member, officer, or employee of Consultant who exercises any functions or responsibility with respect to the program during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or subagreement, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.

J. The undersigned persons signing as officers on behalf of Consultant, a party to this Agreement, hereby severally warrants and represents that said persons have authority to enter into this Agreement on behalf of said Consultant and to bind the same to this Agreement on behalf of said Consultant and to bind the same to this Agreement, and, further that said Consultant has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporated or bylaws against entering into this Agreement.

K. City shall not be responsible or liable for any debts, actions, obligations, negligence, or liabilities committed or incurred by Consultant, its staff or clientele, and Consultant hereby agrees to Protect, defend (with counsel selected by City), hold harmless and indemnify City from and against any and all liabilities for debts, obligations, and negligence. No

payment, however, final or otherwise, shall operate to release Consultant from any obligations under this Agreement. Should either party be required to bring a legal action to enforce the provisions of this Agreement, the prevailing party shall be reimbursed for all court costs and all reasonable attorney's fees incurred in the prosecutions or defense of said action.

L. Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint ventures with one another. Consultant is not an employee of City and is not entitled to any of the rights, benefits, or privileges of City employees, including but not limited to medical, unemployment, or Workers' Compensation insurance.

11. HOLD HARMLESS AND INDEMNITY AGREEMENT.

Consultant shall hold the City, its agents, officers, employees, and volunteers, harmless from and save, protect, defend (with counsel selected by City), and indemnify them against any and all claims, losses, liabilities, and damages from every cause, including, but not limited to, injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of Consultant, whether or not the act or omission arises from the sole negligence or other liability of Consultant, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

12. SPECIAL TERMS AND CONDITIONS

A. It is expressly understood and agreed that either party shall have the right to terminate this Agreement upon fifteen (15) days written notice to the other party. However, Consultant may not terminate An Assignment of Proceeds and Grant of Lien without written consent of City. All reports or accounting provided for herein shall be rendered whether or not falling due within the Agreement period.

B. Further, City reserves the right to terminate this Agreement upon written notification to Consultant under the following conditions:

1) Notification by HUD to the City that said project is ineligible because of project location, services provided, or any other

reason cited by HUD.

2) Notification by HUD to City that said project is deficient and that contained support of the project is not providing an adequate level of service to low /moderate income or minority people.

3) Written notification from HUD to City that the program funds made available to City are being curtailed, withdrawn, or otherwise restricted.

C. City also reserves the right to terminate this Agreement or to reduce the Agreement compensation amount under the following conditions:

1) Failure of Consultant to file required reports; or,

2) Failure of Consultant to meet project dates or deadlines; or,

3) Expenditure of funds under this Agreement for ineligible Activities, services, or items; or,

4) Failure to comply with written notice from City of substandard performance in scope of services under the terms of this Agreement.

D. Consultant agrees that by accepting this Agreement Consultant covenants and agrees not to institute or cause to be instituted litigation against City for any purpose whatsoever on behalf of itself or third parties, excepting breach of the terms hereof. A breach of this provision by Consultant shall entitle City to summarily terminate this Agreement and to a full and complete refund of all sums paid by City to Consultant during the term of this Agreement.

13. OTHER PROVISIONS.

A. During the performance of this Agreement Consultant agrees as follows:

1) Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, sexual orientation, ancestry, national origin, familial status, or any other basis prohibited by applicable law. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, age, handicap, sexual orientation, familial status, ancestry, 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. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2) Consultant will provide, in all solicitations or advertisements for employees placed by or on behalf of Consultant, a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, sexual orientation, ancestry, national origin, familial status, or any other basis prohibited by applicable law.

B. EQUAL OPPORTUNITY IN PARTICIPATION. Under the terms of Section 109 of the Housing and Community Development Act of 1974, and in conformance with City policy and all requirements imposed by or pursuant to this section, no person in the United States shall, on the ground of race, color, religion, sex, age, handicap, sexual orientations, ancestry, national origin, familial status, or any other basis prohibited by applicable law, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity founded in whole or in part with the Community Development Funds.

Specific (not exclusive) Discriminatory Actions Prohibited:

Consultant may not directly or through contractual or other arrangements, on the ground of race, color, religion, sexual orientation, ancestry, national origin, age, handicap, familial status, sex or any other basis prohibited by applicable law:

1) Deny any facilities, services, financial aid, or other benefits provided under the program or activity.

2) Provide any facilities, services, financial aid, or other benefits which are different, or are provided in a different form from that provided to others under the program or activity.

3) Subject to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the program or activity.

4) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

5) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services, or other benefit provided, under the program or activity.

6) Deny an opportunity to participate in a program or activity as an employee.

C. BUSINESS AND EMPLOYMENT OPPORTUNITIES FOR LOW/MODERATE INCOME RESIDENTS. Consultant will conform to the rules and regulations set forth under Section 3 of the Housing and Urban Development Act of 1968, (12 USC 170I u), as amended, and the HUD regulations issued pursuant thereto at 24 CFR Part 135. This act requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area.

D. PROVISIONS OF THE HATCH ACT. Neither Consultant program nor the funds provided therefore, nor the personnel employed in the administration of the program, shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

E. DRUG-FREE WORK PLACE. Consultant will maintain a drug free work place and will comply with all applicable Federal, State, and local laws pertaining to a drug-free work place.

F. PROVISIONS REQUIRED BYLAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application or either party, the Agreement shall forthwith be physically amended to make such insertion or correction.

IN WITNESS WHEREOF, City's City Council, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk of by actions on the _____ day of _____, 2019, and Consultant has caused this Agreement to be executed.


CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:



City Attorney

9/25/19
Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
TDA Consulting, Incorporated,
A Corporation

BY: _____
(Name of Authorized Representative)

ITS: _____
(Title of Authorized Representative)

Taxpayer I.D. No. _____

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

EXHIBIT A

(ATTACH CONSULTANT PROPOSAL HERE)

EXHIBIT B

(Attach Cost Proposal here)