

Childhood Obesity Prevention Grant Program Request for Proposal FY 2020-21

Grant Application Check List

- ☐ Letter of Interest (Maximum 500 words)
- ☐ Approach, Management, and Evaluation Plan (Maximum 500 words)
- ☐ Project Experience (Maximum 500 words)
- ☐ Proposed Scope of Services (Maximum 1500 words)
- ☐ Proposed Budget (use template provided in RFP)
- ☐ References (Maximum of three references; names, title, contact information)
- ☐ Insurance Statement (applicant generated)
- ☐ Conflict of Interest Statement (applicant generated)
- ☐ Agency Contract Statement (applicant generated)
- ☐ Letter of Support (*optional*, depending on location of services)
 - From school administrator (for school-based programs)
 - From executive/lead management (for shared, community-based locations)
- ☐ Fiscal Agent Agreement (*optional*)
 - For proposals with programs that utilize a fiscal sponsor agency



City of San Pablo REQUEST FOR PROPOSALS

PROGRAMS AND SERVICES TO REDUCE CHILDHOOD OBESITY

The City of San Pablo ("City") invites proposals from qualified firms, partnerships, corporations, associations, professional organizations or individuals represented by a fiscal agent to respond to this Request for Proposal ("RFP") to fund community partners that will offer programs and services that are designed with the intention to increase the health and wellness of youth in San Pablo and have a positive impact on the City of San Pablo's continued efforts to decrease childhood obesity in the City.

This RFP is not a formal request for bids or an offer by the City to contract with any party responding to this RFP. The City reserves the right to reject any and all responses. The City also reserves the right to amend this RFP as necessary or waive at will any and all of the criteria or procedures specified in this RFP in the best interests of the City. All materials submitted to the City in response to this RFP will remain the property of the City. Respondents are solely responsible for all costs incurred in responding to this RFP.

The successful proposer shall be required to execute the attached Agreement for Services with the City of San Pablo. Any exceptions to the Agreement must be set forth in the proposal for consideration. Otherwise, all terms of the Agreement are deemed accepted.

PROJECT DESCRIPTION

The City of San Pablo is seeking community-based service providers to implement specific activities, programs, projects and services for youth ages 0 to 17 that directly align with the City of San Pablo's [Community Action Plan \(CAP\)](#) to address the health concern of childhood obesity in this community. Addressing this concern may be done through a variety of methods. Some of these methods for services may include: school-based before, during or afterschool programming, community-based programs, or other community service needs.

GENERAL TIMELINE AND IMPORTANT ELEMENTS

ESTIMATED TIMELINE (Dates may be subject to change)	
RFP issued	Monday, 3/30/2020 by 5 pm
Question Submission Period Ends	Tuesday, 4/14/2020 by 5 pm
Answers to Questions Posted	Thursday, 4/30/2020 by 5 pm
Proposals Due	Thursday, 5/7/2020 at 5 pm
Interviews (if needed)	Week of 5/11/2020
Proposals Recommended for Funding Presented to City Council	Month of June 2020
Contract Negotiations with Grantees	Month of June 2020
Contracts Period Begins	Month of July 2020

SUBMISSION REQUIREMENTS

Interested organizations, agencies, or persons represented by a fiscal agent are invited to submit their proposals in response to this RFP. The deadline to apply is **5:00 pm on Thursday, May 7, 2020**. A complete proposal consists of one (1) electronic copy on a USB drive consisting of a narrative document (Word or PDF format) and separate budget document in Excel format; and five (5) bound copies of requested materials addressed as detailed below. Proposals will not be accepted after this deadline.

City of San Pablo

RFP FY 2020-2021 Childhood Obesity Prevention

Attention: JORA ATIENZA WASHINGTON

San Pablo City Hall

Youth, School, & Community Partnerships Division

1000 Gateway Avenue, 1st Floor

San Pablo, CA 94806

The City of San Pablo is committed to providing as much clarity as possible during this RFP process. All questions about the RFP **must be submitted in writing** to Jora Atienza Washington at joraw@sanpabloca.gov. COSP staff **will not answer questions via telephone or in person**. The deadline to submit questions is **Tuesday, April 14, 2020 at 5 pm**. To ensure applicants have access to both submitted questions and their corresponding answers, the City will publish all received questions and answers **by Thursday, April 30, 2020 at 5 pm** at the City of San Pablo's [Childhood Obesity Prevention Advisory Group website](https://www.sanpabloca.gov/2641/COPAG-Childhood-Obesity-Prevention-Advis): (<https://www.sanpabloca.gov/2641/COPAG-Childhood-Obesity-Prevention-Advis>).

FUNDING PRIORITIES

Funding priority will be given to proposals that address the following areas:

1. Increasing physical activity levels of youth
2. Increasing access of youth to healthy foods and beverages and limiting access to unhealthy foods and beverages
3. Changing messages to youth about nutrition and physical activity, including limiting junk food marketing
4. Improving nutrition and physical activity of youth in San Pablo schools within incorporated city limits. Eligible schools are:
 - Bayview Elementary School
 - Dover Elementary School
 - Downer Elementary School
 - Lake Elementary School
 - Riverside Elementary School
 - Helms Middle School
 - Richmond High School
5. Providing programs and services with measurable goals and/or outcomes

TOTAL FUNDS AVAILABLE

This RFP will provide approximately \$300,000 in funding from July 1, 2020 through June 30, 2021. The funds provided must be used for this specific strategy (Childhood Obesity Prevention) and awards are subject to availability of funds and grant terms.

Tier Funding Categories
Tier 1 Program Award Range: \$15,000-\$25,000
Tier 2 Program Award Range: \$25,001-\$50,000
Tier 3 Program Award Range: \$50,001-\$100,000

USES OF COSP FUNDS

Grant awards shall only be used to support program costs that are direct or indirect expenses related to the requirements provided in the RFP. These funds should be primarily used to support San Pablo residents.

Examples of eligible uses of grant funds include, but are not limited to:

1. Staffing cost and fringes;
2. Rent, lease, and occupancy costs in direct support of proposed activities;
3. Materials and supplies;
4. Food costs;
5. Transportation;
6. Administrative costs up to 15% of the total contract amount (including administrative costs of subcontractors)

Grant funds shall not be used for:

1. Services that do not primarily benefit San Pablo residents;
2. Services that do not primarily benefit children and youth;
3. Acquisition of capital goods;
4. Acquisition of real property;
5. Maintenance, utilities, or similar operating costs of a facility not used primarily and directly by the funded program;
6. Fiscal agent fees that exceed 10% of the total amount;
7. Depreciation on buildings or equipment;
8. Political activity and/or advocacy;
9. Purposes directly supporting a future funding mechanism (i.e. soda tax) to be undertaken by the City, and;
10. Services that should be provided by other entities such as other City departments, county or state government entities, or local education agencies.

LOCAL ECONOMIC OPPORTUNITY POLICY

The City of San Pablo has adopted a Local Economic Opportunity Policy to encourage Agencies and contractors to consider San Pablo residents and businesses when providing services under contract to the City of San Pablo. Proposals shall address how the proposer intends to effectuate the City's Local Economic Opportunity Policy. In addition, the contract for the successful proposer shall include the following provisions:

- **Employment of Local Residents.** Pursuant to the San Pablo Economic Opportunity Policy, the Agency and any subcontractors shall contact the San Pablo Economic Development Corporation (“EDC” at info@sanpabloedc.org or 510-215-3200) at least ten business days prior to hiring or staffing for fulfillment of the Contract, describing number, duties and qualifications needed for available positions, and shall fairly consider for employment any workers referred by the EDC within three business days. “Local Resident” means an individual having an adjusted household income of less than the Area Median Income for Contra Costa County, and domiciled in the City of San Pablo as of the relevant hiring date, with “domiciled” as defined by Section 349(b) of the California Election Code. Discrimination against Local Residents on the basis of their local status is prohibited.
- **Local Subcontracting – Outreach.** Agency shall contact the San Pablo Economic Development Corporation (“EDC” at info@sanpabloedc.org or 510-215-3200) at least two weeks prior to any subcontract award, providing notice and details regarding subcontracting opportunity. The EDC shall notify qualified local businesses of subcontracting opportunities, and provide technical assistance to qualified local businesses during the subcontracting bidding process.

INSTRUCTION TO PROPOSERS

Proposals will be assessed for their ability to achieve the intent of this funding strategy. For current and former grantees, the City will consider information on existing and prior program performance and agency fiscal compliance. Please limit responses to no more than 10 pages. Clarity and brevity are preferable to volume.

Proposals shall include:

Grant Application Check List: This check list serves as a cover sheet of a complete proposal. Applicants need to submit just one completed check list per proposal packet, but are responsible to ensuring that all soft copies and hard copies contain all required components.

Letter of Interest (Maximum 500 words): Describe applicant’s interest, qualifications and experience with similar projects and working with municipalities in the capacity sought for this project.

Approach, Management, and Evaluation Plan (Maximum 500 words): Describe applicant’s internal capacity to implement and evaluate proposed services, including how the applicant plans to record, submit, and report on measurable outcome data, both during the proposed program, and at the conclusion of services. Applicant should also discuss how it intends to comply with the San Pablo Local Economic

Opportunity Policy.

Project Experience (Maximum 500 words): Describe similar projects completed or in progress by applicant, including references. Proposals for school-based services should describe previous experience working in San Pablo or other West Contra Costa Unified schools, if applicable.

Proposed Scope of Services (Maximum 1500 words): Describe in detail the proposed services including: number of unduplicated clients served, dosage of services, and schedules and timelines as appropriate. If co-located in a school, include how proposed services align and specifically support that school's goals. The proposed number of clients served should be categorized as:

- 0-5 years (early childhood/preschool)
- Kindergarten-3rd grade (early elementary school)
- 4th-6th grade (older elementary school)
- 7th-8th grade (middle school)
- 9th-12th grade (high school)
- Adults (18 years of age and older)

Proposed Budget: Provide a proposed budget of the total project for the applicant's proposal. Total budget must include all costs associated to the program including direct and indirect costs. Proposals need to utilize the *Proposed Budget Template* (attached).

References: Provide name and contact information of maximum of three professional references (names and current phone numbers).

Insurance: A statement that your insurance meets the terms contained in the sample agreement included with this RFP.

Conflict of interest Statement: Declaration stating that Agency has not made any contributions to any City of San Pablo public official (hired or elected), or to volunteers serving on review commissions having an influence on this work.

Agency Contract Statement: Include a statement that your firm accepts the terms of the City's Agency Contract form (attached).

Letter of Support (optional, depending on location of services): For proposed services that occur on school sites or other shared locations, a letter of support from a school administrator (for schools) or other executive or lead management staff (for other locations) is required.

Fiscal Agent Agreement (optional, for programs utilizing a fiscal sponsor): For proposals that are represented by a fiscal agent, include a current memorandum of understanding or utilize the *Sample Statement of Fiscal Agent Responsibilities* (attached).

EVALUATION PROCESS

- A. The City of San Pablo and members of the City's appointed Childhood Obesity Prevention Advisory Group will review and evaluate all submitted documents received per this RFP.
- B. It is the intent of the City to keep the contents of the proposal confidential until a recommendation of contract award is made. However, to the extent that the submittals are deemed public records under California law, the submittals may be released publicly.
- C. Submittals will be reviewed for responsiveness and evaluated pursuant to established objective criteria listed below.
- D. After the submittals are evaluated and/or ranked, the City of San Pablo and the Childhood Obesity Prevention Advisory Group may elect to interview one or more agency/organizations. Adequate time will be allowed for presentation of qualifications followed by questions and answers.
- E. Final selection of an agency/organization and authority to proceed with project services, shall be at the sole discretion of the City and upon approval of the San Pablo City Council.

SELECTION CRITERIA	
Criteria	Maximum Points
Quality of Scope of Work	25
Experience with similar kinds of work	15
Unduplicated Number of San Pablo Youth Residents to be served	15
Quality of Approach, Management, and Evaluation of project	25
Proposed approach to local hiring and local contracting	10
References	10
Total Possible Points	100

EXHIBIT A

Form of Professional Services Agreement

AGREEMENT FOR _____ PROGRAM SERVICES
BETWEEN THE CITY OF SAN PABLO AND _____

THIS AGREEMENT, dated this ____ day of _____, 20__, is by and between the City of San Pablo, a municipal corporation organized and existing under the laws of the State of California, ("City"), whose address is 1000 Gateway Avenue, San Pablo Avenue, San Pablo, California 94806, and _____, ("Agency"), whose address is _____, telephone _____, for program services.

RECITALS:

WHEREAS, the City desires to provide funding to qualified community partners to offer, expand, and/or enhance programs services that are designed to increase the health and wellness, and decrease obesity of San Pablo children and youth in alignment with the City's Community Action Plan (CAP) and the City Council's Priority Workplan;

WHEREAS, Agency desires to enter into the agreement described herein with the City;

WHEREAS, Agency has represented to City, and does in fact have the special training, skill, competence, and expertise necessary to provide children- and youth-focused health and wellness services and programs contemplated herein;

NOW, THEREFORE, Agency and the City agree as follows:

AGREEMENT:

(1) Scope of Service.

Scope of Services

Agency agrees to provide childhood obesity prevention services to the City as specified in Exhibit A – Scope of Services and Exhibit B – Project Budget, all of which are attached and incorporated herein by reference. In the event of any discrepancy between any of the terms of Agency's proposal, the City's Request for Proposal, and this agreement, the terms most favorable to the City shall prevail.

Quality of Performance

Agency agrees to perform these services in accordance with the standards of its profession and within the terms of this agreement, and shall at all times be provided on a basis satisfactory to the City Manager, and shall at a minimum be consistent with all goals and objectives set forth herein.

Agency shall be solely responsible for the quality and suitability of services provided pursuant to this Agreement. The City Manager or designee shall determine whether services provided by Agency pursuant to this Agreement are satisfactory to the City. If during the course of this Agreement, it is determined services being provided are not satisfactory, Agency shall take such corrective action as the City may require. Failure to promptly take such action shall constitute a material breach of this Agreement and cause for termination in the City's discretion. This standard of care is not intended and shall not be construed to impose an obligation on the City within the meaning of Government Code Section 815.6.

Time is of the Essence. In the performance of this agreement, time is of the essence. Agency shall be available to begin performance of services under this agreement immediately upon written notification of the execution of this agreement. All work as outlined in the scope of services must be completed by _____. [include deadline if appropriate]

Provision of Services to Minors:

- a. Agency agrees to comply with all requirements of California Penal Code section 5164, including but not limited to ongoing criminal background checks of all individuals who

have, or could have, supervisory or disciplinary authority over a minor. Until there is written confirmation that the individual has cleared this criminal background check, Contractor shall ensure that the individual has no interactions with minors.

b. Agency must comply with the Child Abuse and Neglect Reporting Act (CANRA) guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code § 11164 – 11174.

c. Programs with direct contact with youth should maintain a maximum ratio of 20 students to 1 staff and minimum ratio of 2 students to 1 staff and/or 1 student to 2 staff (so that a single youth is never left alone with a staff member). Youth must be supervised at all times by staff and not left alone with volunteers.

(2) Compensation.

Notwithstanding any contrary indications which may be contained in Agency's proposal, in exchange for the satisfactory performance of services that satisfy and timely achieve the milestones, performance commitments and outcomes identified herein and in the attached exhibits, City hereby agrees to pay Agency a sum not to exceed (\$_____) as follows:

Agency shall be paid within thirty (30) days of receipt of billings for work completed and approved. Invoices shall be submitted containing all information contained in paragraph 6 “Billings” below. In no event shall Agency be entitled to compensation for extra work unless an approved change order, or other authorization describing the extra work and payment terms, has been executed by City prior to the commencement of the work.

Invoices must be signed by an authorized representative of Agency, who shall verify that the invoiced services have been performed.

(3) Changes In Work-Extra Work. In addition to services described in section 1, the parties may from time to time agree in writing that Agency, for additional compensation, shall perform additional services. The City and Agency shall agree in writing to any changes in compensation and/or changes in Agency’s services prior to the commencement of any work. If Agency deems

work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, Agency shall immediately inform the City in writing of the fact. The City shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work, it shall provide compensation to the Agency in accordance with an agreed cost that is fair and equitable.

This cost will be mutually agreed upon by the City and Agency. A supplemental agreement providing for such compensation for extra work shall be negotiated between the City and the Agency.

(4) **Effective Date and Term.** The effective date of this agreement is _____ and it shall terminate on _____.

(5) **Independent Contractor Status.** It is expressly understood and agreed by both parties that Agency, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Agency shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Agency shall be responsible for its own acts and those of its agents and employees during the term of this agreement. Agency shall not represent, at any time or in any manner, that Agency is an employee of the City. Agency will exercise its judgment in recommending to City the methods by which to accomplish City's objectives and desires. In any case where an opportunity is made available to Agency, Agency will determine whether it possesses sufficient training and background to carry out whatever objective is sought by the City. If Agency accepts an engagement, such an acceptance is deemed an affirmative admission that Agency possesses the necessary skills, background, and licenses to perform the needed services. Agency acknowledges that the City will provide no training. Agency will provide whatever tools and materials that are necessary to complete a client engagement. Agency is free to accept, and has accepted in the past, other client engagements. Agency is responsible for purchasing, bringing, providing, and controlling any and all equipment, tools, instruments, etc. needed for completion of the work set forth herein, as well as for maintenance and use of such equipment. It is understood that Agency is hired on a temporary basis only, and that if the City and/or Agency desires to continue Agency's services after expiration or termination of this agreement, Agency will sign a new contract.

(6) **Billings.** Agency's bills shall utilize invoicing and reporting forms provided by the City, which include the following information: a brief description of services performed during the

billing period, the date the services were performed, number of unduplicated clients served, the number of hours spent and by whom, the current contract amount, amount previously billed, total paid to date, outstanding balance, current invoice amount, total amount billed against the contract, amount remaining in contract, and the Agency's signature. Except as specifically authorized by City, Agency shall not bill City for duplicate services performed by more than one person. In no event shall Agency submit any billing for an amount in excess of the maximum amount of compensation provided in sections (2) and (3).

(7) Advice and Status Reporting. Agency shall provide the City with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to City such information as is necessary to enable City to monitor the performance of this Agreement, including statements and data demonstrating the effectiveness of the services provided in achieving the goals and objectives contained herein. The City may withhold payments otherwise due to Agency pending timely delivery of all such reports and information. Agency shall notify the City Manager of any matters that could adversely affect Agency's ability or eligibility to continue to perform services under this Agreement, and shall do so immediately after discovery of the same.

(8) Retention of Records. Agency's complete files, including all records, employee time sheets, and correspondence pertaining to the work as described within the proposal of services submitted to the City shall upon request be available for review by the City, and copies of pertinent reports and correspondence, upon written request, shall be furnished for the files of City. Agency shall maintain adequate documentation to substantiate all charges for hours and materials charged to City under this agreement. Agency shall maintain the records and any other records related to the performance of this agreement and shall allow City access to such records for a period of four (4) years after the completion of the work to which records relate.

At City's request, or upon completion or termination of this agreement, Agency shall return to City all plans, maps, cost estimates, project financial records, reports, and related documents.

All research information, plans, diagrams, financial records, reports, cost estimates or other documents prepared or obtained under the terms of this agreement shall be delivered to and become the property of the City and all data prepared or obtained under this contract shall be made available, upon request, to the City without restrictions or limitations on their use.

Agency and its subcontractors shall maintain all books, documents, papers, employees' time sheets, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract, for inspection by the City, State, F.H.W.A, and/or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested. Agency also agrees to submit all records, books, documents, and related material for audit evaluation by the City, State, F.H.W.A., or authorized representatives prior to, during, or four (4) years following this Project for the purpose of ascertaining applicable overhead rates, book, and record keeping procedures and other information as necessary.

(9) Written Reports and Documents. In accordance with Government Code section 7550, any document or written report prepared by Agency for or under the direction of City shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report; provided, however, that the total cost for work performed exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report. When multiple documents or reports are the subject or product of this agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or reports.

(10) Record and Fiscal Control System. Agency shall maintain its financial records and fiscal control systems in a manner that meets the approval of the City; it shall maintain personnel and payroll records to adequately identify the source and application of all received funds; withhold income taxes; pay employment (social security), unemployment compensation, worker's compensation and other taxes as may be due; and, procure and maintain a City of San Pablo Business License. Agency shall maintain an effective system of internal control to assure that funds provided through the City are used solely for authorized purposes.

(11) Access to Records; Audits. The City shall have access at any time during normal business hours and as often as necessary to any bank account and books, records, documents, accounts, files, reports, and other property and papers of Agency relating to the services to be provided under this Agreement for the purpose of making an audit, review, survey, examination, excerpt or transcript.

(12) **Agency's Testimony.** Agency agrees to consult with City and testify at City's request at no additional cost other than normal witness fees if litigation is brought against City in connection with Agency's services.

(13) **Designation of Primary Provider of Services.** This agreement contemplates the services of Agency firm, _____. The primary provider of the services called for by this agreement shall be _____, who shall not be replaced without the written consent of City.

(14) **Assignment of Personnel.** Agency shall assign only competent personnel to perform services pursuant to this agreement. If City asks Agency to remove a person assigned to the work called for under this agreement, Agency agrees to do so immediately regardless of the reason, or the lack of a reason, for City's request.

(15) **Assignment and Subcontracting.** It is recognized by the parties that a substantial inducement to City for entering into this agreement was, and is, the reputation and competence of Agency. The assignment of this Agreement by Agency, or any interest therein, is prohibited without the prior written approval of the City's [insert here] Agency shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's [insert here the title of the appropriate City official to make this determination].

(16) **Insurance.**

A. **General, Automotive, and Employer's Liability, and Workers' Compensation Provisions.** On or before beginning any of the services or work called for by any term of this agreement, Agency, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified herein below with insurers and under forms of insurance satisfactory in all respects to the City. Agency shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Agency has also been obtained for the subcontractor. Agency shall maintain limits no less than set forth below. If the Agency maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the Agency.

1. **General Liability:** **\$2,000,000**
(Includes operations, products and completed operations and coverage for claims regarding abuse.)

Per occurrence for bodily injury, personal injury, and property damage.

2. Automotive Liability: \$1,000,000

Per accident for bodily injury and property damage

3. Workers' Compensation: As Required by the State of California. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Agency, its employees, agents and subcontractors.

4. Employers' Liability: \$1,000,000 each accident;

\$1,000,000 policy limit bodily injury by disease, **\$1,000,000** each employee bodily injury by disease.

5. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Agency shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. Other Insurance Provisions

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Agency; and with respect to liability arising out of work or operations performed by or on behalf of the Agency including materials, parts or equipment

furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (form CG 20 10 11 85, or forms CG2010 version 10/01 and GC 2037 versions 10/01 or equivalent or CG 20 07 for design professional) to the Agency's insurance policy, or as a separate owner's policy.

- For any claims related to this project, the Agency's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Agency's insurance and shall not contribute with it.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the City.
- Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

(i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Agency, including the insured's general supervision of Agency; products and completed operations of Agency; premises owned, occupied or used by Agency; or automobiles owned, leased, hired, or borrowed by Agency. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.

(ii) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

(iv) Any failure of Agency to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(vi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.

Deductibles and Self-Insured Retentions. Agency shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this agreement. During the period covered by this agreement, upon express written authorization of City Manager, Agency may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Manager may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Agency procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

Notice of Reduction in Coverage. In the event that any coverage required under this section of the agreement is reduced, limited, or materially affected in any other manner, Agency shall provide written notice to City at Agency's earliest possible opportunity and in no case later than five days after Agency is notified of the change in coverage.

7. Waiver of Subrogation

Agency hereby agrees to waive subrogation which any insurer of Agency may acquire from Agency by virtue of the payment of any loss. Agency agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

8. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

9. Verification of Coverage

Agency shall furnish the City with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the city, unless the insurance company

will not use the City's forms. All endorsements are to be received and approved by the City before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. As an alternative to the City's forms, the Agency's insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by the specifications.

10. Subcontractors

Agency shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

B. **Professional Liability.** Agency, at Agency's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one (1) million dollars covering the licensed professionals' errors and omissions, as follows:

- (i) Any deductible or self-insured retention shall not exceed \$50,000 per claim.
- (ii) Notice that cancellation, material change, or non-renewal must be received by the City at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
- (iii) The following provisions shall apply if the professional liability coverages are written on a claims-made form:
 - 1. The retroactive date of the policy must be shown and must be before the date of the agreement.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.

3. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this agreement, Agency must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work. The City shall have the right to exercise at the Agency's cost, any extended reporting provisions of the policy should the Agency cancel or not renew the coverage.

4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.

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

- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
- (ii) Order Agency to stop work under this agreement or withhold any payment which becomes due to Agency hereunder, or both stop work and withhold any payment, until Agency demonstrates compliance with the requirements hereof;
- (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Agency's breach.

(17) Standard of Care. It is understood and agreed that Agency has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this agreement, that City relies upon the professional skills of Agency to do and perform Agency's work in a skillful and professional manner consistent with the standard of care of the of the industry, and Agency thus agrees to so perform the work. Acceptance by City of the work performed under this agreement does not operate as a release of said Agency from such professional responsibility for the work performed. It is further understood and agreed that

Agency is apprised of the scope of the work to be performed under this agreement and Agency agrees that said work can and shall be performed in a manner consistent with the standards of the profession. This standard of care is not intended and shall not be construed to impose an obligation on the City within the meaning of Government Code Section 815.6.

(18) Indemnification.

A. AGENCY shall, to the full extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability of every nature arising out of or resulting from the performance of this Agreement by AGENCY, its officers, employees, agents, volunteers, subcontractors or sub-Agency, excepting only liability arising from the sole negligence, active negligence or willful misconduct of CITY. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

B. The duty to defend is a separate and distinct obligation from the Agency's duty to indemnify. The Agency shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon tender to the Agency of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve the Agency from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Agency asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party, Agency may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

C. In the event that Agency or any employee, agent, sub-Agency or subcontractor of Agency providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for

enrollment in PERS as an employee of City, Agency shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Agency or its employees, agents, sub-Agencys or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

D. The review, acceptance or approval of the Agency's work or work product by any Indemnified Party shall not affect, relieve or reduce the Agency's indemnification or defense obligations. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

E. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Agency from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

F. By execution of this Agreement, Agency acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

(19) Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Agency, its employees, agents, or subcontractors by federal or state law, Agency warrants that such license has been obtained, is valid and in good standing, and Agency shall keep it in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

Agency shall obtain and maintain a City of San Pablo Business License until all contract services are rendered and accepted by the City.

(20) Employment Practices.

A. **Employment of Local Residents.** Pursuant to the San Pablo Economic Opportunity

Policy, the Agency and any subcontractors shall contact the San Pablo Economic Development Corporation ("EDC" at info@sanpabloedc.org or 510-215-3200) at least ten business days prior to hiring or staffing for fulfillment of the Contract, describing number, duties and qualifications needed for available positions, and shall fairly consider for employment any workers referred by the EDC within three business days. "Local Resident" means an individual having an adjusted household income of less than the Area Median Income for Contra Costa County, and domiciled in the City of San Pablo as of the relevant hiring date, with "domiciled" as defined by Section 349(b) of the California Election Code. Discrimination against Local Residents on the basis of their local status is prohibited.

- B. **Compliance With Law.** Agency represents that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment. Agency shall not discriminate in the employment of any person because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement. In performing work and providing services under this Agreement, Agency shall, at its sole cost and expense, comply with all applicable laws of the United States and the State of California; the Ordinances of the City of San Pablo; and the rules, regulations, orders and directories of their respective administrative agencies and the officers thereof.

(21) Local Subcontracting – Outreach. Agency shall contact the San Pablo Economic Development Corporation (the "EDC" at info@sanpabloedc.org or 510-215-3200) at least two weeks prior to any subcontract award, providing notice and details regarding subcontracting opportunity. The EDC shall notify qualified local businesses of subcontracting opportunities, and provide technical assistance to qualified local businesses during the subcontracting bidding process.

(22) Termination.

A. City may terminate this agreement at its sole discretion at any time prior to completion by the Agency of the services required hereunder. Notice of termination of this agreement shall be given in writing to the Agency, and shall be sufficient and complete when same is deposited in the United States Mail, postage prepaid and certified, address as set forth

in the first paragraph of this agreement. The agreement shall be terminated upon receipt of the Notice of Termination by the Agency. If the City should terminate this agreement, the Agency shall be compensated for all work performed prior to the time of receipt of cancellation notice, and shall be compensated for materials ordered by the Agency or his employees, or services of others ordered by the Agency or his employees, prior to receipt of notice of cancellation whether or not such materials or final instruments of services of others have actually been delivered, provided that the Agency or his employees are not able to cancel such orders for materials or services of others. Compensation for the Agency in the event of cancellation shall be determined by City in accordance with percentage of project completed and agreed to by the Agency. In the event of cancellation, all notes, sketches, computations, drawings, and specifications or other data, whether complete or not, remain the property of the Agency. The City may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

B. Termination for Cause. City may terminate this agreement for cause by providing Agency with one day's written notice of such termination should Agency violate any of the terms and conditions of this agreement. In City's discretion and at City's option, such termination for cause may alternatively be accomplished, where Agency fails to perform any of the obligations required of Agency within the time and in the manner provided for under the terms of this agreement, within seven days after receipt from the notice of such default. Upon City's termination of this agreement for cause, City reserves the right to complete the work by whatever means City deems expedient and the expense of completing such work, as well as any and all damages to the extent caused by the negligent acts, intentional acts or errors or omissions of the Agency, shall be charged to the Agency.

C. Immediate Termination. City may terminate this agreement immediately in any case where the Agency engages in fraudulent or criminal activities while performing its services under this agreement, or is otherwise determined to lack the necessary skills to accomplish the desired objectives.

(23) Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Agency: _____

To the City: City Manager
 San Pablo City Hall
 1000 Gateway Avenue
 San Pablo, CA 94806

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

(24) Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Agency pursuant to this agreement shall be the property of the City at the moment of their completed preparation. All materials and records of a preliminary nature such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

(25) Amendments. This agreement may be modified or amended only by a written document executed by both Agency and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

(26) Abandonment by Agency. In the event the Agency ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Agency shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

Agency agrees to be financially responsible to compensate City for any costs incurred by City in retaining the services of another to replace Agency, but only to the extent that the costs of retaining the replacement exceed what remaining amounts would have been paid to Agency under the contract had Agency completed the project.

(27) **Waiver**. The waiver by either party of a breach by the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this agreement.

(28) **No Third-Party Rights**. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

(29) **Severability**. Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

(30) **Compliance with Laws**. In the performance of this agreement, Agency shall abide by and conform to any and all applicable laws of the United States, the State of California, and City ordinances. Agency warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

(31) **Controlling Law**. This agreement and all matters relating to it shall be governed by the laws of the State of California.

(32) **Breach**. In the event that Agency fails to perform any of the services described in this agreement or otherwise breaches the agreement, City shall have the right to pursue all remedies provided by law and equity. Neither payment by the City nor performance by Agency shall be construed as a waiver of either party's rights or remedies against the other. Failure to require

full and timely performance of any provision, at any time, shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter. Any litigation involving this Agreement or relating to the work shall be brought in Contra Costa County, and Agency hereby waives the removal provisions of Code of Civil Procedure Section 394.

In the event of any suit, action or proceeding brought by either party for breach of any term hereof or to enforce any provision hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees.

(33) Inspection by Other Agencies. Authorized representatives of the Federal Government, the California Department of Transportation, or other government agencies which have provided grant funding (if any) for the subject Project and the City may have the right to inspect the work of such services whenever such representatives may deem inspection to be desirable or necessary.

(34) Conflict of Interest. Agency warrants and covenants that Agency presently has no interest in, nor shall any interest be acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless arise, Agency shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this agreement. Agency further warrants its compliance with the Political Reform Act (Gov. Code ' 81000 et seq.) respecting this agreement.

Where City Manager determines, based on facts provided by city staff, that Agency meets the criteria of section 18701 of the FPPC regulations, the individual providing services under this Agreement shall be considered a "designated employee" under the City's conflict of interest code, and shall be required to complete FPPC Form 700 regarding his or her economic interests in a timely manner.

(35) Copyright. Upon City's request, Agency shall execute appropriate documents to assign to the City the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Agency or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such

materials or records. The license reserved by City shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

(36) Whole Agreement. This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(37) Multiple Copies of Agreement. Multiple copies of this agreement may be executed but the parties agree that the agreement on file in the office of the City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

IN WITNESS WHEREOF, Agency has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

APPROVED AS TO FORM:

CITY OF SAN PABLO

A Municipal Corporation

By _____

Lynn Tracy Nerland, City Attorney

By _____

Matt Rodriguez, City Manager

[NAME OF AGENCY]

By _____

Agency, [Title]

ATTEST:

By _____

Patricia Ponce, City Clerk

Dated _____

Attachment:

Exhibit A: Program Scope of Work