

AGREEMENT

THIS AGREEMENT, is entered into as of August 1, 2011, between the COUNTY OF TULARE, referred to as COUNTY, and VALLEY SMALL BUSINESS DEVELOPMENT CORPORATION, referred to as CONSULTANT, with reference to the following:

A. WHEREAS, COUNTY has entered into Standard Agreement Nos. 08-EDEF-5894 and 09-EDEF-6541, collectively referred to as STANDARD AGREEMENT and attached as Exhibit "G," to receive funding from the Community Development Block Grant, referred to as CDBG, Economic Development Allocation California Community Economic Enterprise Fund Component from the State of California, Department of Housing and Community Development, referred to as HCD, to finance the Tulare County Microenterprise and Business Assistance Loan Program, referred to as PROGRAM; and

B. WHEREAS, CONSULTANT meets the requirements as outlined by the CDBG Program and COUNTY's subrecipient procurement requirements and has expertise in carrying out microenterprise and business assistance programs; and

C. WHEREAS, COUNTY wishes to enter into a professional services agreement with CONSULTANT for purposes of implementing the PROGRAM mentioned above utilizing CDBG funds; and

ACCORDINGLY, IT IS AGREED:

1. **TERM:** This Agreement shall become effective upon the execution of this Agreement by the Tulare County Board of Supervisors and shall expire on the closeout date of the STANDARD AGREEMENT, or the latest amendment of the closeout date thereto unless otherwise terminated as provided in this Agreement.

2. **SERVICES:**

a. CDBG-Eligible: CONSULTANT agrees to provide professional services for the PROGRAM and to be compensated by COUNTY as outlined below in Paragraph 3, PAYMENT FOR SERVICES.

b. In-Kind: CONSULTANT agrees to provide a contribution of \$5,000 in the form of in-kind services for PROGRAM activities.

i. In-kind services provided to the PROGRAM are outlined in SCOPE OF WORK attached as Exhibit "A" and PROGRAM GUIDELINES attached as Exhibit "C".

ii. The cost breakdown of in-kind contributions is defined in CONSULTANT BUDGET attached as Exhibit "B".

3. **PAYMENT FOR SERVICES:** The COUNTY shall pay CONSULTANT a sum not to exceed \$180,000 for services provided pursuant to this Agreement subject to the following conditions:

a. Tulare County Microenterprise and Business Assistance Revolving Loan Fund

i. An amount not to exceed \$160,000 of CDBG funds will be spent only for

CDBG-eligible Microenterprise Revolving Loan Fund activity costs, as defined by HCD and further outlined in SCOPE OF WORK and PROGRAM GUIDELINES.

ii. An amount not to exceed \$20,000 of CDBG funds will be spent only for CDBG-eligible Activity Delivery costs, as defined by HCD and outlined in SCOPE OF WORK and PROGRAM GUIDELINES.

iii. The cost breakdown of services provided to the PROGRAM is defined in CONSULTANT BUDGET.

b. General Conditions

i. The compensation to be provided to CONSULTANT under this Agreement will be reduced due to any inability to provide services, whether such an inability is due to CONSULTANT activities or other activities or circumstances beyond the control of CONSULTANT.

ii. COUNTY must approve budget changes in writing prior to any budget adjustment or amendment. The budget adjustment and amendment process is outlined in CONSULTANT BUDGET.

iii. By the fifteenth (15th) day of the second (2nd) month of the project and monthly thereafter, CONSULTANT shall submit monthly invoice statements stating the services provided and the actual costs of the previous month.

iv. All invoices will be submitted through the Resource Management Agency to the Community Development and Redevelopment Division for approval prior to payment by the Auditor's Office. Invoices shall be in the form and contain the information requested by COUNTY and shall be subject to approval by COUNTY, for which approval shall not be unreasonably withheld. COUNTY will endeavor to make payments within thirty (30) days of receipt of approved invoice. COUNTY will endeavor to notify CONSULTANT of any objections, questions, or complaints regarding any particular invoice within fifteen (15) days of receipt of such invoice. If COUNTY determines that any amounts were improperly billed and/or paid to CONSULTANT, or CONSULTANT was improperly underpaid, adjustments by such amounts may be made in the payment on the current or a later invoice with explanation provided. No interest or penalties shall accrue for late payments.

v. All CDBG funds shall be expended one (1) month prior to the expiration date of the STANDARD AGREEMENT.

4. PERFORMANCE REQUIREMENTS: CONSULTANT shall be held to the same goals, milestones, performance measurements, laws, regulations, and requirements as entered into by COUNTY in the STANDARD AGREEMENT and outlined in the SCOPE OF WORK.

5. REPORTING REQUIREMENTS: CONSULTANT shall assist COUNTY in fulfilling all reporting requirements as entered into by COUNTY in the STANDARD AGREEMENT.

6. COMPLIANCE WITH LAW: CONSULTANT shall provide services in accordance with all of the provisions of Federal, State, and local laws; current and future enacted Federal, State, and local governmental guidelines, policies and available funding covenants; and the rules and regulations governing the HCD CDBG Program (42 U.S.C. 5301, 24 CFR Part 570, Subpart

1. and California Administrative Code Sections 7050 through 7124). With respect to CONSULTANT'S employees, CONSULTANT shall comply with all laws and regulations pertaining to wages and hours, State and Federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment. In addition, CONSULTANT agrees to fully comply with all Federal, State and local laws, regulations, and directives that apply to the work involved in the project, including but not limited to the applicable laws and regulations specified in the STANDARD AGREEMENT, attached as Exhibit "G" and COMPLIANCE REQUIREMENTS attached as Exhibit "F".

7. RECORDS: CONSULTANT shall maintain complete and accurate records required by the Federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this Agreement. In addition, CONSULTANT shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONSULTANT shall make such records available to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the expiration date of this Agreement.

8. MONITORING: COUNTY will monitor CONSULTANT during the term of this Agreement for compliance with any or all applicable requirements as outlined in Paragraph 6 of this Agreement and for attainment of expenditure milestones and PROGRAM goals outlined in SCOPE OF WORK.

9. INSURANCE: Prior to approval of this Agreement by COUNTY, CONSULTANT shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in INSURANCE REQUIREMENTS attached as Exhibit "H".

10. INDEPENDENT CONTRACTOR STATUS:

a. This Agreement is entered into by both parties with the express understanding that CONSULTANT will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute CONSULTANT or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

b. CONSULTANT agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONSULTANT shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONSULTANT as to how the services will be performed. As CONSULTANT is not COUNTY'S employee, CONSULTANT is responsible for paying all required State and Federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from CONSULTANT'S payments.
- ii. Make State or Federal unemployment insurance contributions on CONSULTANT'S behalf.

- iii. Withhold State or Federal income tax from payments to CONSULTANT.
 - iv. Make disability insurance contributions on behalf of CONSULTANT.
 - v. Obtain unemployment compensation insurance on behalf of CONSULTANT.
- c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONSULTANT to assure compliance with this Agreement.

11. INDEMNIFICATION: CONSULTANT shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONSULTANT or its agents, officers and employees under this Agreement. Such indemnification obligations shall not be limited in any way by any limitation or the amount or type of damages, compensation or benefit payable by or for either party under worker's or workmen's compensation, disability benefits or other employee entitlements. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONSULTANT under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONSULTANT'S failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

12. CONFLICT OF INTEREST:

- a. CONSULTANT agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONSULTANT for this purpose, from the making of any decision on behalf of COUNTY in which such officer, employee or CONSULTANT has a direct or indirect financial interest. A violation can occur if the public officer, employee or CONSULTANT participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONSULTANT or any business firm in which CONSULTANT has an interest, with certain narrow exceptions.
- b. CONSULTANT agrees that if any facts come to its attention, which raise any questions as to the applicability of conflicts of interest laws, it will immediately inform COUNTY designated representative and provide all information needed for resolution of this question.

13. TERMINATION:

- a. Without Cause: COUNTY will have the right to terminate this Agreement

without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to CONSULTANT the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all plans, specifications and estimates, and other documents prepared by CONSULTANT in accordance with this Agreement. No sanctions will be imposed.

b. With Cause: This Agreement may be terminated by either party should the other party:

- i. be adjudged as bankrupt, or
- ii. become insolvent or have a receiver appointed, or
- iii. make a general assignment for the benefit of creditors, or
- iv. suffer any judgment which remains unsatisfied for thirty (30) days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- v. materially breach this Agreement. Material breach includes but is not limited to CONSULTANT failing to perform obligations under this Agreement, and CONSULTANT failing to perform obligations in accordance with the program time schedule set forth in Exhibit G, "Standard Agreement."

For any of the occurrences except item v., termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the reasonable satisfaction of the non-defaulting party within five (5) days of the receipt of written notice specifying the breach. If the breach is not remedied within that five (5) day period, the non-defaulting party may terminate the agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a five (5) day period, the defaulting party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of termination. COUNTY will pay to CONSULTANT the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If the expense of finishing CONSULTANT'S scope of work exceeds the unpaid balance of the agreement, CONSULTANT must pay the difference to COUNTY in addition to any liquidated damages set forth in section 14, "Liquidated Damages", owed by CONSULTANT for days of delayed program milestone goals caused by the CONSULTANT. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all plans, specifications and estimates, and other documents prepared by CONSULTANT by the date of termination in accordance with

this Agreement. Sanctions taken will be possible rejection of future proposals based on specific causes of non-performance.

c. Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONSULTANT'S services have been terminated by COUNTY, said termination will not affect any rights of COUNTY to recover damages against CONSULTANT.

d. Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONSULTANT'S services are to be performed, may immediately suspend performance by CONSULTANT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONSULTANT to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

14. LIQUIDATED DAMAGES: The parties agree that time is of the essence regarding completion of the project pursuant to this Agreement. If the project is not completed according to the grant expiration set forth in Exhibit G, "Standard Agreement," or as amended by HCD, this delay will constitute a breach of contract by CONSULTANT. Such breach will cause a hardship upon COUNTY and there will be extreme difficulty and uncertainty in fixing the actual damages to COUNTY at the time of such breach. "Actual damages" from CONSULTANT'S breach of project completion date include but are not limited to monetary damages, COUNTY'S loss of good will or credibility with other parties COUNTY contracts with, and future loss of funding to COUNTY. The parties hereby agree to reasonable liquidated damages based on the circumstances existing at the time this Agreement is entered into. As such, if CONSULTANT breaches the promise to COMPLETE PROJECT IN ACCORDANCE WITH THE SCHEDULE SET FORTH IN EXHIBIT "G" BY FAILING TO COMPLETE PROJECT WITHIN THE TIME FRAME PROMISED, then CONSULTANT must pay the sum of \$1,000 per calendar day of delayed completion to COUNTY as reasonable liquidated damages. The parties do not consider these amounts to be penalties. The parties agree that the liquidated damages set forth in this Section do not include damages sustained by COUNTY as a result of COUNTY paying excess of the cost of this Agreement when COUNTY terminates pursuant to Section 13, "TERMINATION," and finishes the scope of work. If COUNTY Terminates in accordance with Section 13, "TERMINATION," and finishes the scope of work, CONSULTANT will pay COUNTY the cost to complete the scope of work that exceeds the cost of this Agreement, in addition to any liquidated damages for delayed project completion set forth in this section.

COUNTY will deduct liquidated damages determined by this Section from any retention or amount due to CONSULTANT pursuant to this Agreement, and will bill CONSULTANT for any liquidated damages in excess of retention or amounts due to CONSULTANT. CONSULTANT will pay COUNTY within thirty (30) days of receiving a bill for liquidated damages.

If COUNTY partially causes the delay of CONSULTANT'S completion of the project pursuant to this agreement, the liquidated damages owed by CONSULTANT will not include days of delayed completion caused by COUNTY. The COUNTY Resource Management

Agency Director may choose to grant CONSULTANT extensions of time for the number of days of delayed completion caused by COUNTY.

Liquidated damages will not be assessed against CONSULTANT when the delay in completion of the work is due to unforeseeable cause beyond the control and without the fault or negligence of the CONSULTANT.

In the event this liquidated damages clause is not upheld, COUNTY may seek actual damages for delayed completion caused by CONSULTANT. Notwithstanding the reach of project completion date addressed in this Section COUNTY may recover actual damages for any other breaches of this Agreement by CONSULTANT.

15. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between CONSULTANT and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

16. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

17. NOTICES:

a. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered; sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:
Roger Hunt
Assistant Director
Resource Management Agency
5961 S. Mooney Blvd.
Visalia, California 93277
Phone No.: (559) 624-7000
Fax No.: (559) 730-2591

With A Copy To:
Laurie Mercer
Community Development Manager
Resource Management Agency
5961 S. Mooney Blvd.
Visalia, California 93277
Phone No.: (559) 624-7000
Fax No.: (559) 730-2591

CONSULTANT:
Debra Raven
Chief Executive Officer
Valley Small Business Development Corporation
7035 North Fruit Avenue
Fresno, California 93726-1852
Phone No.: (559) 438-9680
Fax No.: (559) 438-9690

With A Copy To:
Stanley Tom
Vice President
Valley Small Business Development Corporation
7035 North Fruit Avenue
Fresno, California 93711
Phone No.: (559) 438-9680
Fax No.: (559) 438-9690

b. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth (5th) day after the date of mailing. Either

party may change the above address by giving written notice pursuant to this paragraph.

18. CONSTRUCTION: This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

19. NO THIRD PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

20. GOVERNING LAW: This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California. CONSULTANT waives the removal provisions of California Code of Civil Procedure section 394.

21. WAIVERS: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

22. EXHIBITS AND RECITALS: The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

23. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

24. FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts which may be reasonably required to affect the purposes of this Agreement.

25. ASSURANCES OF NON-DISCRIMINATION: CONSULTANT shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by State or Federal law or regulation.

26. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONSULTANT and CONSULTANT'S employees and no part of this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of COUNTY.

27. DISPUTE RESOLUTION: If a dispute arises out of or relating to this Agreement, or the

breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

28. PROFESSIONAL MANNER: CONSULTANT shall provide the services contemplated by the Agreement in a professional manner and quality satisfactory to the COUNTY.

29. DOCUMENT OWNERSHIP: All finished or unfinished documents, data, studies, computer programs, methodological explanations, surveys, models, photographs, and reports prepared by CONSULTANT under the Agreement shall be considered the property of the COUNTY. Upon completion of the services to be performed or upon termination of the Agreement, these materials shall be turned over to the COUNTY, provided that in any case CONSULTANT may, at no additional expense to the COUNTY, make and retain copies thereof as it desires. CONSULTANT further agrees to keep those materials, which may not be public records under the laws of the State of California confidential.

30. FUNDING CLAUSE: CONSULTANT acknowledges that the COUNTY is dependent upon certain Federal and State funding to pay for the Business Assistance Loan Program provided for in this Agreement. CONSULTANT acknowledges that the COUNTY has applied for CDBG funding, but the COUNTY has not received an award for this project at the time this agreement is executed. If for any reason the COUNTY is not awarded CDBG funding, this agreement is void and the CONSULTANT is not entitled to any compensation or damages. If the COUNTY is awarded the CDBG funding from HCD to finance a Business Assistance Loan Program, this Agreement will become effective. If such funding is discontinued or reduced, COUNTY may exercise its sole discretion to reduce the amount of Business Assistance Loan Program funds or terminate the Agreement by giving the CONSULTANT 30 calendar days notice of the reduction or termination.

31. UNEMPLOYMENT INSURANCE COMPLIANCE: CONSULTANT acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include CONSULTANT'S full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONSULTANT agrees to cooperate with COUNTY to make such information available and to complete DE Form 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

32. IMPROPER USE OF FUNDS: CONSULTANT shall hold harmless, defend and indemnify COUNTY from any liability, action or losses incurred by COUNTY as a result of CONSULTANT'S improper use of funds under this Agreement.

33. CLOSE-OUTS: CONSULTANT'S obligation to COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to COUNTY), and determining the custodianship of records.

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THE PARTIES, having read and considered the above provisions. indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____

BY: _____
Chairman, Board of Supervisors
"COUNTY"

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____
Deputy Clerk

CONSULTANT

Date: _____

By: _____
Title: _____

Date: _____

By: _____
Title: _____
"CONSULTANT"

Note: Corporations Code Section 313 requires that contracts with a corporation shall be signed by the (1) chairman of the Board, the president or any vice-president and (2) the secretary, any assistant, the chief financial officer, or any assistant treasurer; unless the contract is also accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract.

Approved as to Form
County Counsel

By: _____
Deputy

Date: _____

EXHIBIT "A" – SCOPE OF WORK

Tulare County Microenterprise and Business Assistance Revolving Loan Program (PROGRAM)

EXPENDITURE MILESTONES

CONSULTANT will ensure that sufficient progress has been made in implementing the PROGRAM.

PROGRAM GOALS

CONSULTANT shall be held to the same goals, milestones, performance measurements, and requirements as entered into by COUNTY in STANDARD AGREEMENT and more thoroughly explained in the grant application. CONSULTANT will assist COUNTY in the achievement of the PROGRAM goals by the contract expiration date.

PROGRAM SERVICES

COMPENSABLE SERVICES: CONSULTANT will perform the following compensable services as outlined in PROGRAM GUIDELINES in implementation of PROGRAM activities.

As part of its contracted responsibilities, CONSULTANT will provide technical assistance and will regularly communicate with County staff during the implementation and administration of the PROGRAM.

CONSULTANT will submit invoices by the fifteenth day of each month evidencing the time incurred by program delivery staff, and loans approved as negotiated in the Agreement. Each approved loan will be billed to the County after advancement of loan amount has been paid to the participant. Should there be an unexpended balance of grant funds, these funds will have to be returned to the State.

CONSULTANT will perform the following services:

◆ Outreach and eligibility

- Maintain a waiting list, if necessary, offering assistance to eligible and interested applicants on a first-come, first-served basis.
- Determine eligibility of applicants according to program requirements. Require applicants to fill out, if they have not already done so, an Income Verification Form.
- Verify applicant and business eligibility and amount of assistance to be provided consistent with the County's Program Guidelines, as Exhibit "C" as attached, and incorporated herein by reference.

◆ Loan Packaging

- Prepare loan and associated documents for qualified applicants pursuant to the Tulare County Loan Approval and Drawdown Checklist, included as "Exhibit I."
- Submit completed loan document packages to COUNTY for approval in conformance with program guidelines. Include: Title reports, credit reports/history,

interior/exterior photos, mailing addresses, phone numbers, family sizes, elderly and handicapped applicant information.

- Determine the level of Environmental Review necessary for each loan and complete the necessary documents.
- Prepare all necessary documents and record a Deed of Trust or complete a UCC-1 Filing in cases where there is no real property available, securing the County's investment. A "Request for Notice" also needs to be recorded if the County is not the primary lien holder.
- Consultant will, at Consultant's expense, arrange for legal counsel's review of the proposed loan documents and any specific loan documents that Consultant feels require such review, to ensure that the documents are in compliance with current laws and CDBG regulations.
- Provide the good-faith advancement of approved loan amounts to borrower on behalf of the County; name the County as "Trustee" and "Beneficiary" ("Lender") in the Deed of Trust; and submit invoice to the County for reimbursement.
- In the event that CONSULTANT must utilize their own cash reserves or lines of credit in order to fund the loans for the COUNTY on an interim basis, the COUNTY will reimburse CONSULTANT for all principal plus interest at the interest rate by the CONSULTANT within sixty (60) days after receipt of the invoice from CONSULTANT.
- After the loan has been issued to the applicant and all documents have been completed, CONSULTANT will prepare a letter to the program participant indicating the file is closed, the balance of the loan, the amount and due date of monthly payments, and the location where loan payments can be made. The letter will also contain instructions for close out and reconveyance of the loan when it is paid in full. The complete participant file will be transferred to the County.
- Submit invoices to COUNTY on a monthly basis.
- Process approved loans to closing.
- Transfer participant files to COUNTY at project end.

◆ Administration

- Assist the COUNTY in areas of General Administration of the program which include, but are not limited to: CDBG Records system, reports required by the Department of Housing and Community Development (HCD), program amendments, liaison between the COUNTY and the State, and other services to be mutually agreed upon.
- Provide COUNTY with necessary technical assistance to implement and administer the State Grant Agreement.
- Provide monthly reports to COUNTY on progress and performance in relation to the activity budget and schedule milestones included in COUNTY'S State Standard Agreement or HCD approved amendments.
- Prepare reports that demonstrate compliance with CDBG Program procedures and Federal and State regulations.
- Prepare and retain all pertinent records and documents sufficient to reflect all charges submitted.

- Expend all funds to meet the required milestone deadlines contained in the State Standard Agreement. If funded, COUNTY will provide a copy of the State Standard Agreement.
- Additional funds may be added to the contract for projects in the COUNTY'S efforts so fully expend CDBG Program Income prior to drawing down grant funds, as required by HCD.
- CONSULTANT will visit the proposed business site from time to time, to ensure that the suggested number of jobs has been created, the business is in fact open or in the process of opening, and that loan funds were spent on the proposed equipment, supplies, etc.

IN-KIND SERVICES: CONSULTANT will perform the following in-kind services as outlined in PROGRAM GUIDELINES in implementation of PROGRAM activities.

1. Track and maintain all necessary records, which are consistent with HCD standards for reporting and monitoring, for each PROGRAM activity and participant to complete all required reports, including but not limited to those outlined in BENEFICIARY TRACKING PLAN, attached as Exhibit "D" and COST ALLOCATION PLAN, attached as Exhibit "E."
2. Assist COUNTY in generating reports in fulfillment of HCD requirements outlined in STANDARD AGREEMENT.
3. Provide COUNTY with statistical analysis of program participant information and performance data necessary to evaluate the effectiveness of PROGRAM services.

The COUNTY will provide or shall cause to be provided to CONSULTANT a copy of each loan applicant's Microenterprise Technical Assistance and Counseling program file. The file shall include but may not be limited to:

1. Applicant's Income Verification Form
2. Business Readiness Assessment
3. Summary of Training
4. Business Plan
5. Personal Financial Statement
6. Personal and Business Income Tax Returns
7. Financial Projections with explanations

8. Support Documents as Requested.

This information shall be provided to CONSULTANT no later than sixty (60) days prior to the date of termination of this Agreement.

The preparation of the Loan Documents requires at a minimum the following:

1. Loan Application
2. Evidence of County and State loan approval
3. Loan Analysis
4. Entity Documentation
5. Any pertinent information required through the loan approval process

EXHIBIT "B" – CONSULTANT BUDGET

Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program (PROGRAM)

ITEMIZED BUDGET

The following line item budget is the basis for determining the amount of CONSULTANT costs compensable by COUNTY. (See SCOPE OF WORK for a description of each activity.) This budget also outlines the breakdown of the in-kind contributions that CONSULTANT commits to provide.

Line Items	CDBG Microenterprise Activity	CDBG Activity Delivery	Total Budget	TCRA Match	In-Kind Contributions
Microenterprise and Business Assistance Revolving Loan Fund	\$ 137,000	\$ -	\$137,000	\$ -	\$ -
Technical Assistance	\$ 7,500	\$ -	\$ 7,500	\$ -	\$ -
Program Administration	\$ -	\$ 5,000	\$ 5,000	\$5,000	\$ -
TOTAL	\$ 144,500	\$ -	\$149,500	\$5,000	\$ -

Each invoice submitted to COUNTY by the CONSULTANT must include the following:

1. Running total of expenditures to date by line item for both CDBG compensable services and in-kind contributions.
2. Documentation of services provided or expenditures, including copies of invoices, contracts, receipts, bills, time sheets, counseling reports, or other references documenting the charges billed to the COUNTY or incurred by CONSULTANT.

BUDGET ADJUSTMENTS

A budget adjustment is defined as a change in value for reimbursable line items without a change in the dollar value for reimbursable services rendered by CONSULTANT. COUNTY may consider CONSULTANT budget adjustments after submittal of a formal proposal, including the following documentation:

1. Progress report outlining expenditures, in-kind contributions, and milestones achieved to date and balances outstanding in each;
2. Proposed budget outlining projected costs for the entire duration of the contract, including in-kind contributions, highlighting where actual costs are expected to differ from the original budget;
3. Explanations and justifications for changes in each line item; and
4. Plan outlining expected uses of additional funds received.

BUDGET AMENDMENTS

A budget amendment is defined as a change in value for reimbursable line items and a change in the dollar value for reimbursable services rendered by CONSULTANT. COUNTY may consider CONSULTANT budget amendments after submittal of a formal proposal, including the same documentation required for a budget adjustment as listed above; however, a budget amendment also requires a formal contract amendment approved in a resolution by the COUNTY Board of Supervisors.

EXHIBIT “C” – PROGRAM GUIDELINES

Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program
(PROGRAM)

EXHIBIT “D” – BENEFICIARY TRACKING PLAN

Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program
(PROGRAM)

EXHIBIT “E” – COST ALLOCATION PLAN

Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program
(PROGRAM)

EXHIBIT "F" – COMPLIANCE REQUIREMENTS
ALL CONTRACTS AND SUBCONTRACTS

1. **NONDISCRIMINATION CLAUSE:**

a. During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. CONSULTANT and its subcontractors shall insure 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.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

2. **EQUAL OPPORTUNITY:**

a. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances: During the performance of this Agreement, CONSULTANT assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any grant activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

b. The Training, Employment and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance:

i. The work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project. The order of priority provided by Section 3 is defined in 24 CFR 135.34(a)(2).

ii. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

iii. CONSULTANT will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

iv. CONSULTANT will include these Section 3 clauses in every contract and subcontract for work in connection with the project and will, at the direction of the State, take appropriate action pursuant to the contract upon a finding that CONSULTANT or any contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and, will not let any contract unless CONSULTANT or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

v. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be a condition of the federal financial assistance provided to the project, binding upon CONSULTANT, its successors and assigns. Failure to fulfill these requirements shall subject CONSULTANT, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

c. Americans with Disabilities Act (ADA) of 1990: By signing this Agreement, CONSULTANT assures COUNTY that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issues pursuant to the ADA.

3. ANTI-LOBBYING CERTIFICATION:

a. The undersigned certifies, to the best of his or her knowledge or belief, that:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

b. CONSULTANT shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity and that all subrecipients shall certify and disclose accordingly.

c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

4. CONFLICT OF INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF CONSULTANTS, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS: No member, officer, or employee of CONSULTANT, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for grant activities to be performed in connection with the program assisted under this Agreement. CONSULTANT shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

5. CONFLICT OF INTEREST OF CERTAIN FEDERAL OFFICIALS: No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

6. CONSULTANT AND SUBCONTRACTS:

a. CONSULTANT shall not enter into any agreement, written or oral, with any contractor without the prior determination by the State of the contractor's eligibility. A contractor or subcontractor is not eligible to receive grant funds if the contractor is not licensed in a good standing in California, or is listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

b. This Agreement between COUNTY and CONSULTANT shall require CONSULTANT and its subcontractors, if any, to:

i. Comply with the applicable State and Federal requirements described in Attachments A and B of STANDARD AGREEMENT which pertain to, among other things, labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace.

ii. Maintain at least the minimum State-required Worker's Compensation Insurance for those employees who will perform the grant activity or any part of it.

iii. Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by CONSULTANT or any subcontractor in performing the grant activity or any part of it.

iv. Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of four (4) years from the date of termination of this Agreement, or four (4) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement or the STANDARD AGREEMENT and any amendments, whichever is later.

v. Permit the State, Federal government, the Bureau of State Audits, the Department of Housing and Community Development and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

7. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS: Where required, CONSULTANT shall comply with, and require contractors and subcontractors to comply with, each of the following:

- a. Federal, State and local regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, or any other matters applicable to this Agreement.
- b. Sections 103 and 107 of the contract Work Hours and Safety Standards Act (40 U.S.C. 327-220) as supplemented by DOL Regulations (29 C.F.R., Part 5);
- c. Executive Order 11246 and all implementing regulations of the DOL;
- d. Rehabilitation Act of 1973, (24C.F.R., Part 8);
- e. Drug-Free Workplace Act of 1990, (Calif. Govt. Code Sec. 8350 et seq.).

8. UNIFORM ADMINISTRATIVE REQUIREMENTS: CONSULTANT shall comply with all applicable uniform administrative requirements, as described in 24 CFR § 570.502 and 24 CFR § Part 84, and/or Part 85, as applicable.

9. PROCUREMENT:

- a. CONSULTANT shall comply with CDBG Program policy concerning the purchase of equipment and shall maintain inventory records of all non-expandable personal property as defined by such policy as may be procured with CDBG funds provided herein.
- b. CONSULTANT shall procure all materials, property, or services in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards, and shall subsequently follow Attachment N, Property Management Standards as modified by 24 CFR 570.502(b)(6), covering utilization and disposal of property.

10. REVERSION OF ASSETS: Upon expiration of the STANDARD AGREEMENT, if CONSULTANT has any CDBG funds on hand as well as any accounts receivables attributable

to CDBG funds, must be transferred to COUNTY. Any real property acquired with CDBG funds must be transferred to COUNTY upon expiration of this Agreement.

11. GRANTOR RECOGNITION: CONSULTANT shall ensure recognition of the role of the State CDBG Program in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to the funding source. In addition, CONSULTANT will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

12. CLIENT DATA: CONSULTANT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to COUNTY monitors or their designees for review upon request.

13. DISCLOSURE: CONSULTANT understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of COUNTY'S or CONSULTANT'S responsibilities, with respect to services provided under this Agreement is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

EXHIBIT "G" – STANDARD AGREEMENT

Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program
(PROGRAM)

EXHIBIT "H" – INSURANCE REQUIREMENTS

Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program (PROGRAM)

CONSULTANT shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property, which may arise from, or in connection with, performance under the Agreement by CONSULTANT, its agents, representatives, employees or subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability Insurance of \$1,000,000 combined single limit per occurrence. If the annual aggregate applies it must be no less than \$1,000,000.
2. Comprehensive Automobile Liability Insurance (if applicable) of \$1,000,000 per occurrence.
3. Workers' Compensation and Employer's Liability Insurance as required by law. Deductibles and Self-Insured Retentions

B. Specific Provisions of the Certificate

1. The Certificate of Insurance for General Liability and Comprehensive Automobile Liability Insurance must meet the following requirements:
 - a. *Name the COUNTY, its officers, agents, employees and volunteers, individually and collectively, as additional insureds.*
 - b. *State that such Insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.*
 - c. *Provide that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to COUNTY.*
2. The Certificate of Insurance for Workers' Compensation must include the following waiver of subrogation:
 - a. *Waiver of Subrogation. CONSULTANT waives all rights against COUNTY and its agents, officers, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A (-) from a company admitted to do business in California. Any waiver of these standards is subject to approval by COUNTY Risk Manager or County Risk Manager's designee.

E. Verification of Coverage

Prior to approval of this Agreement by COUNTY, CONSULTANT shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to COUNTY. COUNTY reserves the right to require certified copies of all required insurance policies at any time.

EXHIBIT “I” – LOAN APPROVAL AND DRAWDOWN CHECKLIST
Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program
(PROGRAM)

EXHIBIT “J” – ROLES AND RESPONSIBILITIES OUTLINE

Tulare County Microenterprise and Business Assistance Revolving Loan Fund Program
(PROGRAM)