

REQUEST FOR QUALIFICATIONS AND PROPOSAL

PRIVATE DEVELOPMENT REVIEW AND ENGINEERING PLAN CHECK SERVICES

FEBRUARY 26, 2020



RESPONSES DUE: NO LATER THAN 3:00 PM, MARCH 16, 2020

City of Napa Public Works Department
Development Engineering Division
1600 First Street/P.O. Box 660
Napa, CA 94559-0660
(707) 257-9520

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Part I – INFORMATION	1
A. SOLICITATION	1
B. BACKGROUND	1
C. PROJECT OVERVIEW	2
D. SCOPE OF SERVICES	2
Part II - PROPOSAL INSTRUCTIONS	4
A. PROPOSAL	4
B. RFP INQUIRIES.....	4
C. SUBMISSION OF PROPOSAL	4
D. SIGNATORY REQUIREMENTS	4
E. CONSULTANT QUALIFICATIONS	4
F. PROPOSED SCHEDULE	5
G. PROPOSAL CONTENTS.....	5
H. ADDITIONAL ITEMS RELATED TO THE PROPOSAL.....	5
I. PUBLIC RECORDS	6
J. SELECTION PROCEDURE	6
Part III - PROPOSAL CONTENT AND FORMAT	7
A. TRANSMITTAL LETTER.....	7
B. EXECUTIVE SUMMARY.....	7
C. BACKGROUND INFORMATION	7
E. PROJECT STAFF	8
F. SUBCONSULTANTS	8
G. PROJECT APPROACH	8
H. QUALITY ASSURANCE/QUALITY CONTROL.....	8
I. EXCEPTIONS.....	8
J. BILLING RATES	8
Part IV- SELECTION CRITERIA	10
A. SELECTION CRITERIA AND SCORING.....	10

ATTACHMENTS

- A. GENERAL INFORMATION FORM
- B. SAMPLE AGREEMENT FOR ENGINEERING SERVICES

Part I – INFORMATION

A. SOLICITATION

The City of Napa (City) is soliciting proposals from qualified parties to provide professional engineering on-call consultant services specializing in private development review and engineering plan check services for our Development Engineering Division (DED).

Professional engineering consulting firms are invited to submit a proposal for the performance of services described in “*Part 1D., Scope of Services.*” Proposals must respond to the specific activities in this Request for Qualifications and Proposal (RFQ-RFP). The City welcomes the formation of consultant teams that will provide all the technical expertise needed by DED. The proposal process, terms, and conditions will be in accordance with the requirements and guidance contained herein.

To be considered, please submit four (4) copies of your written proposal by **3:00 PM on March 16, 2020** to:

City of Napa Public Works Department
Development Engineering Division
P.O. Box 660, 1600 First Street
Napa, CA 94559-0660
Attention: Eric Vandeburgt, Assistant Engineer

B. BACKGROUND

The City’s Development Engineering Division is responsible for the engineering review and processing of private development applications as well as plan check, inspection and coordination of infrastructure construction activities resulting from the development process. The Division also provides administration of the Stormwater Program and assistance to the public in the issuance of encroachment permits and general inquiries.

DED staff members review development applications to determine the impact of proposed developments on City infrastructure including water, streets and storm drain facilities. Applications for tentative subdivision and parcel maps, use permits, lot line adjustments, building and grading permits are reviewed and Conditions of Approval are prepared to mitigate development impacts.

Application processing and plan check assure that the development of public improvements is accomplished in accordance with applicable state laws and City Code requirements. Staff reviews improvements plans, subdivision maps, improvement agreements, bonds, legal descriptions, deeds and offers of dedication associated with a wide range of development projects. Staff also coordinates with other city departments, agencies and utility companies as well as provides assistance to private developers and the general public as required throughout the development process.

The City has recently approved revisions to the Napa Pipe Redevelopment (NPR) project. This project will include up to 945 residential units, a Costco and mixed commercial type development. An entire road network with utilities will be constructed. There are also several complicated offsite improvements required on the State Highway and on the local road network. Review of the NPR design, improvement plans, and final maps will be needed on a fast track basis as negotiated in the NPR’s Development Agreement with the City. The City will be relying on contract services to keep up with the pace of this development.

C. PROJECT OVERVIEW

The project consists of providing on-call consultant services in private development review and plan check for the DED staff from up to three (3) professional civil engineering firms, essentially serving as an “extension” of staff for a two-year period for a not-to-exceed amount of \$250,000 each.

DED reserves the option of extending the Professional Services Agreement, depending on the continuing high-quality performance of the selected on-call consultant(s) and City’s needs. Prior to the end of the two-year agreement period, DED shall perform an evaluation of the consulting services rendered by the on-call consultant(s) to determine if the agreement(s) should continue. The evaluation shall focus on the consultants’ ability to perform and responsiveness to DED staff’s needs.

Upon request from DED, the consultant shall provide a scope of work, budget, and schedule for each task. The consultant shall identify the work to be done, as well as, all task deliverables from the consultant. The Consultant shall not charge or invoice the City for its cost in developing scope proposals.

DED will issue a Notice to Proceed (NTP) for each approved task. The consultant shall conduct the work according to the approved scope, budget, and schedule. No work shall proceed until DED issues the NTP for the task. All charges to the project must relate to the conduct of the technical work for the approved task.

D. SCOPE OF SERVICES

The required on-call consultant services for Private Development Review and Engineering Plan Check are anticipated to include the following tasks:

1. Engineering Review and Special Conditioning of Private Development Projects applying for Planning Discretionary Permits, focusing on, but not specifically limited to the following:
 - Review of various private development applications such as tentative subdivision and parcel maps, use permits, lot line adjustments, building permits and grading permits to determine the impact of the proposed development on City facilities including streets, drainage, water distribution, grading, parking, pedestrian and vehicular circulation, clean water/erosion control aspects of projects and floodplain/floodway issues.
 - Review Improvement Plans for streets, utilities and similar facilities.
 - Review Right-of-Way requirements for acquisitions, dedications, and easements.
 - Prepare conditions of approval to address development related impacts.
 - Represent DED and/or Public Works, as necessary, at Inter-Departmental Review (IDR) meetings, Planning Commission and City Council meetings/hearings, as requested.

Applications received by the Planning Division each week are discussed at the weekly Inter-Departmental Review Committee (IDR) meeting. The personnel assigned will review project applications and attend the weekly meeting to discuss the completeness and conditions for approval. Personnel will review Project Applications, Development Plans, Supporting Documentation, and Technical Reports. They will also prepare IDR comments and conditions.

2. Engineering Plan Check of Private Development Projects with approved City discretionary permits, including, but not limited to the following:

- Review of private development improvement plans for technical correctness and conformance with general engineering principals, state law (subdivision Map Act), City Code and Standards, conditions of approval, and approved Tentative Maps.
- Review studies, reports, and/or materials associated with development projects including but not limited to improvement agreements, bonds, legal descriptions, deeds, offers of dedication, and CEQA documents.
- Review Parcel Maps and Final Subdivision Maps
- Stormwater (SWPPP, SRMP, ESCP, etc.)

The Consultant personnel assigned will review estimates, design drawings, maps, and other related documents for compliance with City of Napa minimum requirements and Design Standards. The Consultant shall also perform a site visit as part of review and attend meetings as necessary with City.

3. Engineering Review of Building Permits

The consultant shall keep track of billable hours on a weekly basis distributed among the development project numbers assigned by the City. All invoices for this agreement shall show the distribution of hours among the City-assigned development project numbers.

Consultant shall provide personnel approved by City to perform the functions described above. Task 1 activity listed above shall take place in City provided facilities unless specific arrangements are mutually agreed upon for work to take place elsewhere. Consultant staff shall be present at City's designated location for Task 1 activity from two to three days a week for this agreement, depending on workloads from DED. Alternative schedules shall be provided to accommodate night meetings and other needs of City on an as-needed basis. Similarly, Tasks 2 and 3 may require performing functions in City offices to keep up with workload and prescribed deadlines.

Following consultant selection, the City shall provide the following facilities and materials for Task 1, 2 and 3 in person activities:

- Office space including computer, desk, telephone, office supplies, and clerical support.
- Computer services including internet access, city email account, information technology support services

The proposal is to include a scope of work which identifies the various project tasks and associated costs as generally outlined in this RFP.

Part II - PROPOSAL INSTRUCTIONS

A. PROPOSAL

Before preparing a proposal, the Consultant shall carefully examine the entire Request for Proposal (RFP) and become familiar with its contents. Submission of a Proposal shall be considered evidence that the Consultant has fully studied the RFP and is familiar with the general conditions to be encountered in performing any services.

B. RFP INQUIRIES

Inquiries on the contents and requirements of the RFP will be accepted in written form only. Inquiries can be mailed or faxed to the City of Napa Public Works Department, P.O. Box 660, Napa, CA 94559, attention Eric Vandeburgt, fax number (707) 257-9522. The deadline for inquiries is **3:00 PM on Tuesday, March 10, 2020**, after which time no further inquiries will be addressed.

Substantive requests for information received may be responded to in writing by the City in the form of an addendum to this RFP and sent to all recipients of the RFP.

C. SUBMISSION OF PROPOSAL

The Proposal must be submitted by **3:00 PM on Monday, March 16, 2020**. Late proposals will not be accepted and will be returned unopened. It is the Consultant's responsibility to see that the Proposal is received at the proper time. The City is not responsible for delayed deliveries due to mailing. The time the Proposal is received at the Public Works counter shall determine the official time received. The submission of a Proposal shall constitute a firm offer to the city for ninety (90) days from the submission deadline for Proposals.

Please submit three (3) copies of the proposal and one (1) unbound copy (total of four (4) copies) of the proposal for the purpose of photocopying by the City, if necessary. Copies must be delivered in a sealed opaque envelope and addressed to the attention of:

City of Napa Public Works Department
Development Engineering Division
P.O. Box 660, 1600 First Street
Napa, CA 94559-0660
Attention: Eric Vandeburgt, Assistant Engineer

D. SIGNATORY REQUIREMENTS

The General Information Form included in the Attachments shall be signed by an authorized representative of the Consultant. The Consultant shall furnish documentation that the person signing the Form is empowered with signatory authority for the Consultant. The Form may be accompanied by a Corporate Resolution or other legal document.

E. CONSULTANT QUALIFICATIONS

1. The Consultant will have experience in providing private development review and engineering plan check services to local governments. Consultant must demonstrate their ability to perform the tasks listed in this RFP-RFQ.

2. The Consultant will provide a Project Manager who is licensed in the state of California as a Civil Engineer. The Project Manager will be individually responsible for all Consultant services.

F. PROPOSED SCHEDULE

The proposed schedule for the Consultant selection is as follows:

RFP Issued	February 26, 2020
Inquiry Deadline	March 10, 2020 until 3:00 PM
Proposal Due.....	March 16, 2020 until 3:00 PM
Notification of Selection	March 30, 2020 (tentative)
Complete Negotiation and Process Contract	April 8, 2020 (tentative)
Contract Approval by City Staff.....	April 25, 2020 (tentative)
Contract Approval by City Council	May 5, 2020 (tentative)

G. PROPOSAL CONTENTS

The proposal should consist of the following major sections, and in the order shown:

1. Transmittal Letter
2. Executive Summary
3. Background Information
4. Firm Experience
5. Project Team Information
6. Sub-consultants
7. Detailed Approach
8. Quality Assurance/Quality Control
9. Exceptions
10. Billing Rates

Further information on proposal content and format is included in Part III of this RFP.

H. ADDITIONAL ITEMS RELATED TO THE PROPOSAL

1. Proposal Rejection/Proposal Costs:

This Request for Proposal does not commit the City to entering into a contract, to paying any costs incurred in the preparation of any Proposal, or to procuring or contracting for services. The City reserves the right to cancel in whole or in part this RFP, to reject any and all Proposals, to accept the Proposal it considers most favorable to the City’s interest in its sole discretion, and to waive irregularities or informalities in any Proposal or in the proposal procedures. The City further reserves the right to reject all Proposals and issue a new RFP at its sole discretion. In addition, the proposal and other materials provided to the City in relation to this RFP will become the property of the City.

2. Subconsultants:

If any part of the work or products described in the proposal is to be provided by subconsultants, please provide the following:

- A description of each subcontractor’s role in this project
- A description of previous joint ventures between the Consultant and subcontractor
- The corporate or company name and names of officers or principals of companies proposed as subcontractors

3. Contract & Insurance Requirements:

The City has stringent requirements in contracting with consultants and is unable to make substantial changes to the insurance requirements and the contract to be used for this project. Attachment B contains a sample Agreement for Services. Respondents are strongly encouraged to have the contract reviewed by their insurance company. **Please include any proposed exceptions or changes to the contract in your response.** Any proposed exceptions or changes to these provisions will be subject to City approval.

The laws of the State of California shall govern the contract executed between the successful Consultant and the City and any interpretations or constructions thereof. Further, the place of performance and transaction of business shall be deemed to be in the City of Napa, State of California, and in the event of litigation, the exclusive venue and place of jurisdiction shall be in the State of California, and more specifically, in Napa County.

4. Requests for Additional Information:

The City reserves the right to request additional information to clarify the Proposals.

5. Withdrawal of Proposals:

A respondent may withdraw his or her Proposal anytime before the date and time when Proposals are due, without prejudice, by submitting a written request for withdrawal to the Public Works Director. Verbal withdrawal requests or withdrawal requests by telephone will not be accepted by the City.

I. PUBLIC RECORDS

Each Consultant is hereby informed that, upon submittal of its proposal to the City in accordance with this RFP, the proposal is the property of the City.

1. Unless otherwise compelled by a court order, the City will not disclose any proposal while the City conducts its deliberative process in accordance with the procedures identified in this RFP. However, after the City either awards an agreement to a successful Consultant, or the City rejects all proposals, the City shall consider each proposal subject to the public disclosure requirements of the California Public Records Act (California Government Code sections 6250, et seq.), unless there is a legal exception to public disclosure.
2. If a Consultant believes that any portion of its proposal is subject to a legal exception to public disclosure, the Consultant shall: (1) clearly mark the relevant portions of its proposal "Confidential"; and (2) upon request from the City, identify the legal basis for exception from disclosure under the Public Records Act; and (3) the Consultant shall defend, indemnify, and hold harmless the City regarding any claim by any third party for the public disclosure of the "Confidential" portion of the qualifications submittal.

J. SELECTION PROCEDURE

1. The City will have a Selection Committee for the evaluation and ranking of proposals
2. The City may conduct interviews if the Selection Committee determines after review of the proposals that interviews would further benefit the selection process.
3. The top-ranked firm based upon the proposals (and interviews if held) will be given the opportunity to execute an Agreement for Consulting Services with the City. If an agreement regarding scope and fee is not reached within a reasonable period, the City may pursue negotiations with the next ranked firm or reissue the RFP altogether.

Part III - PROPOSAL CONTENT AND FORMAT

GENERAL INFORMATION

Proposals shall be 8½" x 11" in size. Four (4) originals are required. One (1) of the originals must be unbound.

In order to facilitate the evaluation of the proposals, consultants should format their proposals using the following sections:

A. TRANSMITTAL LETTER

A transmittal letter, signed by an officer who is authorized to bind the Consultant, shall be included with the proposal and the letter must state that the proposal is binding for 90 days from the submission deadline for proposals.

1. Consultant Contact

Please provide the name, address, telephone number, email address, and facsimile number of the prime contact. This will be the individual who can be contacted during proposal evaluation if the City has questions about the proposal.

2. Location(s)

Please provide the location of the Consultant's headquarters. In addition, provide the location of any local support offices which will provide service to the City.

3. Company Management/Ownership

The City is looking for a consultant that can provide a measure of proven stability and reliability given the nature of an on-call contract. Please describe the Company's (and any subconsultant's) size, company management and ownership.

B. EXECUTIVE SUMMARY

A brief summary of the key characteristics of the proposal is required.

C. BACKGROUND INFORMATION

Background information should describe in general the firm's history and its experience in the various types of services provided. Indicate the extent of professional engineering services on similar projects with an emphasis on working with other government agencies on private development plan checks.

Provide a list of all contracts terminated (partially or completely) by clients for convenience or default within the past three years. Include contract value, description of work, sponsoring organization, contract number, and name and telephone number of contracting entity.

A completed copy of the General Information Form included in Attachment A of the RFP shall be submitted with the Proposal.

D. RELEVANT EXPERIENCE

Provide specific information on the firm's experience, particularly in working with other local governments. Provide a brief description of at least four projects for which the consultant team has provided similar services during the past four years for local city and county jurisdictions in the greater San Francisco Bay Area. For all referenced projects, please list the following:

- Client (contact person, address, and phone number)
- Project description and location
- Description of services by Consultant
- Years during which the work was performed
- Total value of services provided by Consultant
- Consultant's project manager
- Key personnel involved
- Subconsultants employed

E. PROJECT STAFF

Identify the Project Manager and key personnel on the project team that will remain on the project through its duration. For all project team members, describe specific services they will perform, and illustrate clearly the applicability of the individual's background, education, and experience to his or her assigned role. Provide resumes for key personnel expected to expend significant effort on the project.

F. SUBCONSULTANTS

Identify any and all subconsultants proposed to serve on the project, with background information and particular experience of key personnel, including past projects and resumes.

G. PROJECT APPROACH

Describe the approach your firm would use in the implementation of the project tasks. Include a detailed scope of work including tasks and deliverable.

H. QUALITY ASSURANCE/QUALITY CONTROL

Describe how quality assurance and quality control will be provided for the project. Identify the individuals that will be involved in QA/QC services and at what milestones they will be provided. If your firm has a structured Quality Assurance/Quality Control Program, describe it briefly and show how it will be applied to the project.

I. EXCEPTIONS

Please include a statement regarding exceptions to the sample contract. If no exceptions are included, the City will expect the Consultant will be able to sign the City's contract and provide the required insurance and indemnification.

J. BILLING RATES

This section shall include a one-page summary table of the following information:

- Team members
- Classification of each team member
- Hourly billing rates for each team member

The billing rates shall be applicable through the first year of the contract. An adjustment to the billing rates shall be negotiated for any contract extensions which need to be approved by the City.

Part IV- SELECTION CRITERIA

A. SELECTION CRITERIA AND SCORING

The Proposals will be evaluated and rated based on the factors listed below.

Criteria	Maximum Points	Rating
Understanding of the work to be done	25	
Experience with similar kinds of work	25	
Quality of staff for work to be done	20	
Office Location proximity to Napa	10	
Demonstrated technical ability	20	
Total	100	

ATTACHMENT A

GENERAL INFORMATION FORM

ATTACHMENT B

**SAMPLE SERVICES AGREEMENT FOR
ON-CALL CONSULTANT SERVICES**

SAMPLE ONLY - DO NOT FILL OUT

**SERVICES AGREEMENT (PROFESSIONAL SERVICES)
On-Call Consultant Services**

City Agreement No. _____

City Budget Code: _____

This Services Agreement (Professional Services) for On-Call Consultant Services (“**Agreement**”) by and between the City of Napa, a California charter city (“**City**”), and *{***INSERT Consultant’s full legal name and entity type, e.g., corporation or partnership***}* (“**Consultant**”), is effective on the Effective Date identified on the signature page.

RECITALS

A. The City desires to obtain the services more particularly described in this Agreement and Exhibit “A,” and generally including professional civil engineering services on an on-call basis.

B. On February 26, 2020 the City issued a request for proposals for on-call professional consultant services, and on _____ the Consultant submitted a proposal demonstrating the Consultant’s qualifications and experiences to provide such services.

NOW, THEREFORE, the City and the Consultant, for the mutual consideration described herein, agree as follows:

1. SCOPE OF SERVICES.

1.1. Services. Consultant, acting in its capacity as an engineer, licensed and in good standing under California law, will perform the services described in the *Scope of Services and Schedule of Performance*, attached hereto as **Exhibit “A”** and incorporated herein by reference (“**Services**”), in accordance with the terms and conditions of this Agreement and to the satisfaction of the City’s authorized representative, *{***INSERT name of position of City’s Authorized Representative***}* (“**City’s Authorized Representative**”).

1.2. Standard of Care. In performing the Services, Consultant will meet or exceed the applicable standard of care for and exercise the degree of skill and diligence ordinarily used by reputable professionals within the greater San Francisco Bay Area who provide the same or similar type of professional services as the Services required under this Agreement. Consultant will require and ensure that all of its employees, subconsultants, or agents performing or contributing to the Services will comply with the requirements of this Agreement.

1.3. Independent Contractor. Consultant will control the manner and means for performing the Services, acting as an independent contractor and not as an employee of the City. Consultant will not be entitled to any of the benefits that the City provides to its employees, including, but not limited to, health or retirement benefits.

1.4. Subcontracting. If Consultant subcontracts with a subconsultant to perform any of the Services, the City is deemed an intended beneficiary of that subcontract and the subconsultant will owe a duty of due care to the City. City reserves the right to approve or reject any proposed subconsultant, based on the subconsultant’s qualifications, relevant experience, or reputation.

1.5. Third Party Beneficiaries. Except to the extent expressly stated herein, this Agreement will not be construed to create any rights in third parties.

1.6. Time for Performance. Time is of the essence for the performance of all Services and duties

under this Agreement. Consultant will commence and complete all Services by the date and within any timeframes set forth in Exhibit "A." Services for which times for performance are not specified in this Agreement will be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction from the City's Authorized Representative. Consultant will submit all requests for extensions of time to the City in writing no later than ten days after the start of the circumstances or events giving rise to the delay, and no later than the time by which performance is due. The City's approval of any extension of time for performance of the Services will not operate to waive the City's rights or remedies with respect to damages caused by Consultant's delay.

1.7. Errors and Omissions. Consultant is solely responsible for costs arising from its errors and omissions, including increased construction costs or delay costs. Upon City's request, Consultant will promptly correct its errors and omissions, at no cost to the City.

1.8. Unsatisfactory Services. Upon written notice from the City that any of the Services are unsatisfactory or fail to comply with the requirements of this Agreement (collectively, "**Unsatisfactory Services**"), Consultant will promptly correct or cure any such Unsatisfactory Services as specified in the City's written notice. Consultant will not be entitled to any additional compensation or extension of time to correct or cure the Unsatisfactory Services. Consultant's correction or cure of Unsatisfactory Services will not operate to waive the City's rights or remedies with respect to any damages caused by the Unsatisfactory Services, the cost of which may be recovered by the City as an offset from payment otherwise due or to become due to Consultant.

2. COMPENSATION.

2.1. Payment. The City will pay Consultant for Consultant's time and authorized expenses necessary to perform the Services, at the rates and charges set forth in the *Compensation Rates and Charges* attached hereto as **Exhibit "B"** and incorporated herein by reference, as compensation in full for Services satisfactorily performed in compliance with this Agreement. Consultant's total compensation for performing the Services may not exceed **\$250,000** without prior written authorization from the City. If the City authorizes Consultant to perform services in addition to the Scope of Services set forth in Exhibit "A," Consultant will be compensated in accordance with the rates and charges in Exhibit "B." Consultant will not be entitled to any compensation for additional services performed without the City's prior written consent, or which exceed the scope of the City's written consent.

2.2. Invoices. Consultant will submit a monthly itemized invoice to the City's Authorized Representative for the Services provided during the preceding month. At a minimum, the invoice will identify the Services performed, the hours spent performing the Services, the applicable hourly rate(s), and any authorized expenses based on the rates and charges authorized in Exhibit "B." The City will pay the Consultant within 30 days after approval of each invoice, with the exception of any disputed amounts.

3. AUTHORIZED REPRESENTATIVE. Consultant hereby assigns {***INSERT name of Consultant's Authorized Representative***} to serve as the Consultant's authorized representative ("**Consultant's Authorized Representative**"), to personally participate in and manage the Services provided under this Agreement, and to serve as the primary point of contact for all matters pertaining to this Agreement.

3.1. Substitutions. As a material inducement to entering into this Agreement, the City has relied upon Consultant's representations regarding Consultant's qualifications (including the qualifications of Consultant's Authorized Representative, its personnel, and its subconsultants, if any, as identified on Exhibits "A" and "B"). Consultant will not replace Consultant's Authorized Representative (or any of its personnel or its subconsultants, if any, as identified on Exhibits "A" and "B") without the City's prior written consent.

4. NOTICES. All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail

sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

TO CITY: *{**INSERT name of position of City's Authorized Representative**}*
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660
*{**INSERT email address of City's Authorized Representative**}*

TO CONSULTANT: *{**INSERT name, title, address, and email address of Consultant's Authorized Representative**}*

5. TERM. The term of this Agreement begins on the date it is signed by the City Clerk, below, attesting full execution of the Agreement by both parties ("**Effective Date**"), and ends upon Consultant's completion of the Services required by this Agreement, unless terminated earlier as provided herein. The following provisions will survive expiration or termination of this Agreement: Section 7.2 (Dispute Resolution), Section 8.1 (Confidentiality), Section 8.4 (Records of Performance), Section 10 (Indemnification), Section 11.4 (Professional Liability), Section 13.3 (Taxes), and Section 14 (General Provisions).

6. CITY'S RIGHT TO TERMINATE. The City may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to Consultant, effective upon the date stated in the notice. If the City terminates the Agreement it will pay Consultant for all Services satisfactorily performed up to and including the effective date of the termination, subject to the provisions of Sections 2 and 8.2.

7. DEFAULT AND DISPUTE RESOLUTION.

7.1. Default. Consultant will be deemed in default of this Agreement if Consultant is not complying with the terms of this Agreement, or the City has reason to believe that Consultant's ability to perform the Services has been or will be impaired. If either of these circumstances exist, the City may give written notice of default to Consultant and demand that the default be cured or corrected within ten days of the notice, unless the City determines that additional time is reasonably necessary to cure the default. If Consultant fails to cure the default within of the time specified in the notice, and the Consultant fails to give adequate written assurance of due performance within the specified time, then the City may terminate this Agreement in accordance with Section 6, or the City may pursue dispute resolution in accordance with Section 7.2.

7.2. Dispute Resolution. If any dispute arises between the parties in relation to this Agreement, the Authorized Representatives for each party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. If the parties are unable to resolve the dispute, in whole or in part, through informal discussions, the parties agree to participate in mediation. Notwithstanding the existence of a dispute, the Consultant will continue providing the Services during the course of any dispute, unless otherwise directed by the City.

7.2.1. Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session will take place within 60 days of the date that such notice is given, or sooner if reasonably practicable. The parties will jointly appoint a mutually acceptable mediator. The parties will share equally the costs of the mediator; however, each party will pay its own costs of preparing for and participating in the mediation, including any legal costs.

7.2.2. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute. In addition, any claims by Consultant arising from or related to this Agreement, are subject to the claim presentment requirements in the Government Claims

Act (Government Code section 900 et seq.).

8. INFORMATION AND RECORDS.

8.1. Confidentiality. Consultant will not disclose any information or records related to the performance of this Agreement, including information and records received from the City, as well as information and records created by the Consultant, to any person other than a City employee, unless and only to the extent that the City provides the Consultant with prior written consent to make a disclosure. Consultant will notify the City's Authorized Representative of any request for disclosure of information, or any actual or potential disclosure of information, under this Agreement. Consultant's obligations under this section will survive the termination of this Agreement.

8.2. Title to Records. All original documents or records ("**work product**"), whether paper or electronic, required by this Agreement to be prepared by Consultant (including its employees and subconsultants), whether complete or in progress, are the property of the City. Consultant will promptly deliver all such work product to the City at the completion of the Services, upon termination, or upon demand by the City. However, Consultant may make and keep copies of the work product.

8.3. Contract Cost Disclosure. For any document or report prepared in whole or in part by Consultant pursuant to this Agreement, Consultant will include the numbers and dollar amounts of related contracts or subcontracts as further specified by Government Code Section 7550.

8.4. Records of Performance. Consultant will maintain adequate records of performance under this Agreement (including Services provided, invoices for payment, and payments received) and make these records available to the City for inspection, audit, and copying, during the term of this Agreement and until four years after the Agreement has expired or been terminated.

8.5. Electronic Communications. Consultant will use reasonable good faith efforts to avoid transmitting electronic viruses or other damaging coding, and will promptly advise the City if Consultant discovers that an electronic virus or similar destructive coding may have been transmitted to the City.

8.6. Copyrights/Patents. In performing the Services under this Agreement, Consultant will not unlawfully infringe on any copyrighted or patented work. Consultant is solely responsible for the cost of any authorizations necessary to use any copyrighted or patented work.

9. ACCIDENT REPORT. If any death, personal injury, or property damage occurs in connection with the performance of the Services, Consultant will promptly submit to the City Clerk's Office a written notice of the incident of damage with the following information:

9.1. A description of the damage including date, time, and location, and whether any City property was involved;

9.2. Name and contact information of any witness;

9.3. Name and address of the injured or deceased person(s); and

9.4. Name and address of Consultant's insurance company.

10. INDEMNIFICATION. To the full extent permitted by law, Consultant will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "**Liability**") of any nature, arising out of, pertaining to, or relating to Consultant's negligence, recklessness, or willful misconduct in the performance of this Agreement. Consistent with Civil Code Section 2782, Consultant will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. To the extent that Services are "design professional services," as defined by Civil Code Section 2782.8, the cost to defend charged to the Consultant will not

exceed the Consultant's proportionate percentage of fault. Consultant's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Consultant, including, but not limited to, workers' compensation insurance.

11. INSURANCE. Without limiting Consultant's indemnification obligations in section 10, Consultant will procure and maintain throughout the period of this Agreement, the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Consultant, its agents, employees or subcontractors:

11.1. General Liability Policy. Comprehensive or Commercial General Liability Insurance ("CGL") at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence. If the Services involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate will be twice the required occurrence limit.

11.2. Automobile Liability Policy. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident, combined single limit.

11.3. Workers' Compensation. Workers' Compensation insurance meeting statutory limits of the Labor Code. The workers' compensation policy will contain or be endorsed to contain a waiver of subrogation against the City, its officials, officers, agents, and employees.

11.4. Professional Liability. Professional liability insurance insuring against Consultant's errors and omissions in performing the Services, with a policy limit of at least \$1,000,000. The professional liability insurance will include prior acts coverage sufficient to cover all Services provided by Consultant, and which will remain in effect for four years following expiration or termination of this Agreement.

11.5. Endorsements. The CGL and automotive liability policies will contain or be endorsed with the following provisions:

11.5.1. The City, its officers, elected or appointed officials, employees, volunteers, and agents, are covered as additional insureds for liability arising out of the operations performed by or on behalf of Consultant. The coverage will contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, volunteers, and agents.

11.5.2. The Consultant's insurance is primary and no insurance held by the City will be called upon to contribute to a loss.

11.5.3. The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

11.6. All Policies.

11.6.1. For all insurance policies required under this Agreement, prior to the City's execution of this Agreement, Consultant will furnish the City with certificates and original endorsements effecting the required coverage. Each certificate of insurance will state that the coverage afforded by the policy or policies will not be reduced, cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Notice required under this subsection will be sent by certified mail. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by City or as approved by City's Risk Manager.

11.6.2. Any deductible or self-insured retention of \$100,000 or more will be disclosed to the City prior to the City's execution of this Agreement and is subject to approval by the City.

11.6.3. If Consultant does not keep all required insurance policies in full force and effect, the City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

12. CONFLICTS OF INTEREST. Consultant warrants that as of the Effective Date of this Agreement it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. Consultant further warrants that in the performance of the Services, Consultant will not employ or enter into a subcontract with any person or entity having any such conflict of interest.

12.1. Financial Interest. Consultant will not make or participate in making or in any way attempt to use Consultant's position to influence a City decision in which Consultant knows, or has reason to know, Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that it has diligently conducted a search and inventory of its financial interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have a financial interest that would conflict with Consultant's duties under this Agreement. Consultant will immediately notify the City in writing if Consultant learns of a financial interest that may conflict with Consultant's obligations under this Agreement.

12.2. Covenant Against Contingent Fees. Consultant warrants that it has not employed, retained, or entered into a contract with any person or entity, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any person or entity, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the making of this Agreement. For breach or violation of this warranty, the City may void this Agreement without liability or any further obligation to Consultant, or, alternatively, may elect to deduct from payments due or to become due to Consultant, the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

12.3. Statement of Economic Interest. If the City determines Consultant (or any of its employees or subconsultants) is subject to disclosure requirements under the Political Reform Act (Government Code section 87100 et seq.), Consultant (including any required employees or subconsultants) will complete and file a "Statement of Economic Interest" (Form 700) with the City Clerk's Office disclosing Consultant's financial interests.

13. COMPLIANCE WITH LAW.

13.1. Legal and Licensing Compliance. Consultant will comply with all applicable federal, state and local laws, rules, and regulations related to the Services under this Agreement. Consultant represents and warrants to City that Consultant has and will keep in effect during the term of this Agreement all licenses (including, but not limited to, the City of Napa business license), permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice Consultant's profession or perform the Services.

13.2. Nondiscrimination. At all times during the term of this Agreement, Consultant will comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination based on race, ethnicity, color, national origin, religion, marital status, age, sex, sexual orientation, disability (including any physical or mental impairment that substantially limits a major life activity), medical condition, or any protected class.

13.3. Taxes. Consultant will file tax returns as required by law and pay all applicable taxes on amounts paid pursuant to this Agreement. Consultant will be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes.

13.4. Provisions Deemed Inserted. Every provision of law required to be inserted or referenced in this Agreement will be deemed to be inserted or referenced.

14. GENERAL PROVISIONS.

14.1. Headings. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

14.2. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

14.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

14.4. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

14.5. Assignment and Delegation. This Agreement will not be assigned or transferred in whole or in part, nor will any of the Consultant's duties be delegated, without the City's prior written consent. Any attempt to assign, transfer, or delegate this Agreement, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

14.6. Modifications. This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

14.7. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

14.8. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

14.9. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

15. SIGNATURES.

15.1. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

15.2. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

CITY:
CITY OF NAPA, a California charter city

CONSULTANT:

*(Type name of Consultant/form of organization)**

By: _____
(Type name and title)

By: _____
(Type name and title)

ATTEST:

By: _____
(Type name and title)

Tiffany Carranza, City Clerk

Address: _____

Date: _____
("Effective Date")

COUNTERSIGNED:

Telephone: _____

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

*Corporation, partnership, limited liability corporation, sole proprietorship, etc.
Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President **and** the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

EXHIBIT "A"

SCOPE OF SERVICES AND SCHEDULE OF PERFORMANCE

1.0. SCOPE OF SERVICES. Consultant will perform the Services described in this Exhibit "A," in accordance with the terms of the Agreement.

2.0. SCHEDULE OF PERFORMANCE.

2.1. REQUESTS FOR SERVICES. Upon request by City, Consultant will provide the Services described above, beginning on _____, 2020, and ending on _____, 20___. The Services will be provided for a variety of individual matters, as required by the City. Upon request by the City's Authorized Representative for Consultant to perform Services for a particular matter, Consultant will provide a written estimate of the time within which Services for the matter will be completed, and the estimated cost for providing the requested Services. Following written authorization from the City's Authorized Representative, Consultant will perform and complete the Services as specified in the written authorization. Consultant is not entitled to payment for any Services performed without a written authorization, or for Services that exceed the scope of a written authorization. For purposes of this Section, the written estimate and written authorization may be provided on paper or in an electronic form.

3.0. PREVAILING WAGE COMPLIANCE. If this Agreement includes work performed during the "design and preconstruction phases of construction" (including inspection or field surveying services), as defined by "Prevailing Wage Laws" (as set forth in the California Labor Code, including section 1720 et seq.), the City hereby determines that those Services are "public works," and this Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, and all related regulations, including requirements pertaining to wages, working hours, and workers' compensation insurance, and the following provisions. Subconsultants performing "public works" under this Agreement are subject to all of the requirements of this Section.

3.1. Prevailing Wages. Consultant must comply with the prevailing wage requirements applicable in Napa County for each craft, classification, or type of worker needed to perform the Services, including employer payments for health and welfare, pension, vacation, and apprenticeship. The prevailing wage rates are on file with the City Engineer's office and are also available online at <http://www.dir.ca.gov/DLSR>. Pursuant to Labor Code section 1775, Consultant will forfeit to City as a penalty up to \$200 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate, in addition to paying each such worker the difference between the applicable prevailing wage rate and the amount actual paid to the worker.

3.2. Working Hours. Pursuant to Labor Code section 1810, eight hours of labor constitutes a legal day's work. Pursuant to Labor Code section 1813, Consultant will forfeit to City as a penalty, the sum of \$25 for each day during which a worker employed by Consultant is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such worker is paid overtime wages pursuant to Labor Code section 1815. All Services must be performed during City's regular business days and hours, except as otherwise specified in this Agreement or subject to City's prior written authorization.

3.3. Payroll Records. Consultant must maintain certified payroll records in compliance with Labor Code sections 1776 and 1812, and any implementing regulations promulgated by the Department of Industrial Relations ("DIR"). For each payroll record, Consultant must certify under penalty of perjury that the information in the payroll is true and correct and complies with the requirements of Labor Code sections 1771, 1861, and 1815. Consultant must electronically submit certified payroll records as required by Labor Code section 1771.4(a).

3.4. Apprentices. If the total compensation payable under this Agreement is \$30,000 or more, Consultant must comply with the apprenticeship requirements in Labor Code section 1777.5.

3.5. Compliance. The Agreement is subject to compliance monitoring and enforcement by the DIR. Pursuant to Labor Code section 1725.5, Consultant must be registered with the DIR to perform public works projects, subject to any applicable exceptions, if any. Consultant must post all job

site notices required by laws or regulations pursuant to Labor Code section 1771.4. Pursuant to Labor Code section 1861, by executing this Agreement, Consultant certifies as follows: "I am aware of the provisions of Labor Code 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing performance of the work on this contract."

EXHIBIT "B"

COMPENSATION RATES AND CHARGES

1. AUTHORIZED HOURLY RATES:

Consultant will be compensated for time reasonably necessary to provide the Services based on the following hourly rate schedule, subject to the not-to-exceed limit in Section 2.1 of the Agreement:

Position:

Hourly Rate:

*{***Provide all applicable names of individuals and titles (e.g., Project Manager, Administrative Assistant, etc., in the left-hand column and the corresponding approved hourly rate in the right-hand column.***}*

2. AUTHORIZED EXPENSES AND RATES:

Consultant will be reimbursed for costs incurred to provide the Services only as follows and subject to the not-to-exceed limit in Section 2.1 of the Agreement:

Expense:

Reimbursement Rate:

Maximum Total:

*{***List each category of reimbursable expenses, e.g., travel, supplies, etc., and the allowed rate and/or maximum reimbursable amount.***}*

*{***OPTIONAL: (A) If the City agrees to make payments to the Consultant on a "lump sum" basis (as opposed to paying hourly rates," then: (1) delete the "hourly rates" set forth above, and (2) insert the clause set forth below. (B) If City agrees to make payments to the Consultant based on hourly rates, then delete the clauses set forth below.***}*

Notwithstanding the requirements of Section 2.2 of the Agreement, the Consultant is not required to identify hourly rates for services performed under this Agreement. Rather, the Consultant will submit invoices to the City based on completion of the "Performance Tasks" identified below, for which, upon approval of completion by the City's Authorized Representative, the City will pay the Consultant within 30 days after approval of each invoice the corresponding lump sum payment, as set forth below, subject to the not-to-exceed limit in Section 2.1 of the Agreement:

Performance Task:

Lump Sum Payment Amount: