

REQUEST FOR PROPOSALS (RFP) FOR

ON-CALL LAND SURVEYING SERVICES

RFP ISSUED: NOVEMBER 19, 2020

RESPONSES DUE: 5:00 PM, DECEMBER 18, 2020



CITY OF NAPA PUBLIC WORKS DEPARTMENT
1600 FIRST STREET/P.O. BOX 660
NAPA, CA 94559-0660
(707) 257-9520

I. **REQUEST FOR PROPOSAL**

The City of Napa (“City”) is seeking the assistance and expertise of the professional land surveying community in performing professional land surveying services. Due to the need for such support services, the City is requesting proposals from professional land surveying firms with the intent of selecting three (3) firms to perform survey work on an “on-call” basis. The contract with each of the three (3) selected firms for land surveying services (“Consultant”) shall cover a two-year period for a not-to-exceed amount of \$250,000 but may be extended at the sole discretion of the City.

The Consultant will have extensive experience in professional land surveying with an emphasis in major Capital Improvement Projects and extensive knowledge of local conditions. The City encourages participation from firms with offices within 45 miles of Napa. The Consultant will provide a Project Manager who is licensed in the state of California as a Land Surveyor or Civil Engineer authorized to practice land surveying. The Project Manager will be individually responsible for all Consultant services.

II. **SCOPE OF WORK & DELIVERABLES**

The contract with each Consultant shall consist of one or more task orders prepared and issued by the City. A task order shall define the exact scope of each project and what services the Consultant shall provide. The Consultant shall provide a cost proposal and a schedule for each task order issued. The Consultant’s proposal for each task order shall identify the work to be done by City staff (if any), as well as all deliverables. The budget for each task order shall be tracked separately.

A general scope of work is included in Attachment A of this RFP.

III. **PROPOSED SCHEDULE**

The proposed schedule for the Consultant selection is as follows:

| <u>Milestone</u> | <u>Proposed Dates</u> |
|---|------------------------------|
| RFP Issued..... | November 19, 2020 |
| Inquiry Deadline | December 10, 2020 |
| Proposal Due..... | December 18, 2020 |
| Notification of Selection (Tentative) | January 8, 2021 |
| Complete Negotiation and Process Contract (Tentative) | January 22, 2021 |
| Contract Approval by City Council | TBD |

All dates are subject to change at the discretion of the City.

IV. INQUIRIES

Inquiries on the contents and requirements of the RFP will be accepted in written form only. Inquiries can be emailed to the attention of Rosa Corona rcorona@cityofnapa.org. The deadline for inquiries is Thursday, December 10, 2020, 5:00 PM Pacific Time, 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.

V. PROPOSAL REQUIREMENTS

Proposal must be electronically submitted, see next section for instructions. Maximum page count for the proposal is twenty (20) sheets. The General Information Form is not counted toward the maximum page count. Resumes can be added to the proposal as part of the proposal's appendix, ten (10) sheets maximum.

Proposals must include clear descriptions of the firm's capabilities to perform the requirements of the RFP, including the following:

- A. **Transmittal Letter.** This letter should outline the firm's ability to provide the experience and scope of services requested. Please describe the company's size, management and ownership, including name, address, number of years in business, number of employees, primary contact, company legal status and Tax ID number. This letter must be signed by an officer who is authorized to bind the Consultant and state that the proposal is binding for 90 days from the submission deadline for proposals.
- B. **Staff Experience.** Include a brief description of each key staff assigned to a typical project. Identify any sub-consultants proposed to serve on the project as well.
- C. **Sample Projects.** Include a minimum of three (3) sample projects including tasks and deliverables provided to the owner that are like what the City seeks completed by the firm within the past five years. Include a brief description of the project, owner contact information, and fee for services.
- D. **Project Approach.** Describe how the Consultant's approach will meet the particular needs of an on-call professional land surveying services contract, with an emphasis on the ability to perform services on short (a minimum of 48 hours) notice. Describe the equipment inventory of the firm and discuss methods used in the performance of land surveying tasks, including the firm's philosophy on error and precision.
- E. **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.

- F. **Rate Schedule.** Please submit a schedule of hourly rates by employee classification, including terms and rates of overtime for additional work if requested. Include sub-consultant's rate schedule as well.
- G. **Exceptions.** Please include a statement regarding exceptions to the City's sample contract included in the Attachments. If no exceptions are included, the City expects the Consultant will be able to sign the City's contract and provide the required insurance and indemnification.
- H. **Signatory Requirements.** The General Information Form included in the Attachments must be signed by an authorized representative of the firm. The firm must furnish documentation that the person signing the form is empowered with signatory authority for the company. The form may be accompanied by a Corporate Resolution.

VI. **PROPOSAL SUBMITTAL**

The proposals must be electronically submitted by **Friday, December 18, 2020, 5:00 PM Pacific Time**. Late proposals will not be accepted. 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 connectivity problems. The time the proposal is logged as received in the City's email system shall determine the official time received.

Please submit an electronic copy of the proposal to the attention of: Rosa Corona, rcorona@cityofnapa.org with subject heading "RFP for On-Call Land Surveying Services"

VII. **SELECTION PROCEDURE AND EVALUATION CRITERIA**

The City will have a Selection Committee for the evaluation and ranking of proposals. The City may conduct interviews if the Selection Committee determines after review of the proposals that interviews would further benefit the selection process. The top three (3) ranked firms 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 is not reached within a reasonable period, the City may pursue negotiations with the next ranked firm or reissue the RFP altogether.

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

| | MAX. POINTS |
|---|------------------------|
| 1. CONSULTANT EXPERIENCE | 40 |
| <i>Qualifications and relevant experience of Consultant and subconsultant personnel</i> | |
| 2. CONTRACT UNDERSTANDING | 20 |
| <i>Understanding of the on-call contract and work by task order</i> | |
| 3. FIRM'S CAPABILITIES | 30 |
| <i>Demonstrated capability on similar or related projects</i> | |
| <i>Equipment available/used by the Consultant</i> | |
| <i>Approach to maintaining quality of work and cost control</i> | |
| <i>Commitment to availability of personnel assigned to the contract for task order work on short notice</i> | |
| 4. OFFICE LOCATION | 10 |
| <i>Proximity of office and personnel to the City of Napa</i> | |

VIII. ATTACHMENTS

- A. GENERAL SCOPE OF WORK
- B. GENERAL INFORMATION FORM
- C. SAMPLE AGREEMENT FOR PROFESSIONAL SERVICES

ATTACHMENT A

GENERAL SCOPE OF WORK

On-call professional land surveying services under this agreement may include, but are not limited to, the following activities conducted to industry standards:

- Aerial photogrammetry
- Boundary and right-of-way surveys
- Topographic surveys, including cross sections
- Alignment surveys of streets, street improvements, or utility lines
- Establishment of reference points for existing monumentation
- Establishment of new monumentation for horizontal (CCS 83 Zone II) and vertical (NAVD 88) control
- Preparation of Corner Records or Records of Survey
- Preparation of Legal Descriptions and Plats
- Settlement monitoring
- Construction staking or verification of Contractor-provided construction staking

Additional requirements are as follows:

1. The Consultant's survey crew should be available within a 48-hour notice.
2. The Consultant's survey crew should be experienced with the tasks listed above.
3. The Consultant's survey party should consist of two or three persons per crew. Ideally, at least one survey party member shall be a Professional Land Surveyor registered in the State of California or a Registered Civil Engineer authorized to practice land surveying in the State of California. Alternatively, the Consultant may propose an experienced but non-licensed surveyor to serve as party chief under the direction and "responsible charge" (as defined in the Professional Land Surveyor's Act) of a Professional Land Surveyor registered in the State of California or a Registered Civil Engineer authorized to practice land surveying in the State of California. The proposal shall consist of a resume of the party chief for the City's review and approval prior to the start of any field work. The City reserves the right to reject any proposals.
4. The Consultant's project manager shall be available for periodic meetings to discuss issues related to task orders.
5. All supplies, such as, but not limited to, stakes, flagging, nails, spikes, ties, paint, etc. shall be included in the hourly rate for the survey party.
6. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.

ATTACHMENT A

7. The Consultant's survey crew shall be able to provide proper traffic control in accordance with the latest California MUTCD in effect or as required by the City when carrying out their functions and duties. An encroachment permit from the City may also be required.
8. The Consultant's survey crew should be available for occasional night work (4:30 p.m. to 7:00 a.m.) upon 72-hour advance notice.
9. All survey work shall be performed and delivered in U.S. Survey Feet or as required by the City.
10. All survey work shall be performed on Epoch 2008.00, CCS 83 Zone II horizontal coordinates and use NAVD 88 vertical control.
11. Plans and Maps shall be submitted in AutoCAD Civil 3D format in use by the City at the time of issuance of the task order, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
12. All deliverables shall be signed and sealed pursuant to Section 8761 of the Business and Professions Code.

ATTACHMENT B

GENERAL INFORMATION FORM

To be completed by the proposer and submitted with the proposal

PROFESSIONAL CONSULTING SERVICES TO THE CITY OF NAPA
FOR
ON-CALL LAND SURVEYING SERVICES
NAPA, CALIFORNIA

Legal Name of Firm

Firm's Address

Firm's Telephone Number

City, State, Zip

Type of Organization (Partnership, Corporation, etc.)

Name of Project Manager and Title

Name, Title and Phone No of Person to Which Project Correspondence Should be Directed

Address Where Correspondence Should be Sent

Signature of Authorized Representative of Consultant

To be accompanied by documentation that signatory is empowered with authority for the Consultant.

ATTACHMENT C

SERVICES AGREEMENT (PROFESSIONAL SERVICES) On-Call Land Surveying Services

City Agreement No. _____

City Budget Code: _____

This Services Agreement (Professional Services) for On-Call Land Surveying 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 land surveying services on an on-call basis.

B. On November 19, 2020 the City issued a request for proposals for on-call professional land surveying 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 land surveying consultant, 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

ATTACHMENT C

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

ATTACHMENT C

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.

ATTACHMENT C

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

ATTACHMENT C

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

ATTACHMENT C

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.

ATTACHMENT C

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.

ATTACHMENT C

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

By: _____
{**INSERT name & title: person signing for City**}

ATTEST:

Tiffany Carranza, City Clerk

Date: _____
("Effective Date")

COUNTERSIGNED:

Joy Riesenberg, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

CONSULTANT:
*{**INSERT Consultant's full legal name including entity type, e.g., corporation or partnership**}*

By: _____
{**INSERT name & title: person signing for Consultant**}

By: _____
*{**INSERT name & title: second person signing for Consultant [if needed, e.g., for corporations]**}*

ATTACHMENT C

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.

1.1. TYPE OF SERVICES. The professional services may include, but not limited to, the following:

*{**INSERT Type of Services**}*

2.0. SCHEDULE OF PERFORMANCE.

2.1. REQUESTS FOR SERVICES. Upon request by City, Consultant will provide the Services described above, beginning on _____, 20__, 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

ATTACHMENT C

- 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."

ATTACHMENT C

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.***}*