



## City of Davis

Request for Proposals  
2021-2029 HOUSING ELEMENT UPDATE

**Date Released: April 24, 2020**  
**Date and Time Due: May 29, 2020**

### Contact Person:

SHERRI METZKER  
PRINCIPAL PLANNER

or

JESSICA LYNCH  
SENIOR PLANNER

COMMUNITY DEVELOPMENT & SUSTAINABILITY

23 RUSSELL BOULEVARD

Davis, CA 95616

[smetzker@cityofdavis.org](mailto:smetzker@cityofdavis.org)

or

[jlynch@cityofdavis.org](mailto:jlynch@cityofdavis.org)

## TABLE OF CONTENTS

a.	INTRODUCTION .....	3
	(i) Overview and Background .....	3
	(ii) Purpose of Project .....	3
	(iii) Term of Contract .....	4
b.	SCOPE OF Services .....	4
	(i) Anticipated Timeline .....	4
	(ii) Existing Documents .....	4
c.	PROPOSAL REQUIREMENTS.....	5
	(i) Cover Letter of Interest .....	5
	(ii) Proposal Content.....	5
d.	PROPOSAL SUBMISSION REQUIREMENTS.....	9
e.	EVALUATION CRITERIA AND SCORING .....	10
f.	SELECTION PROCESS AND ESTIMATED SCHEDULE .....	10
g.	PROPOSAL SCHEDULE.....	11
h.	COMPANIES BEING SENT THIS RFP.....	11
i.	NO OBLIGATION.....	12
j.	MISCELLANEOUS.....	12
k.	QUESTIONS .....	14
	APPENDIX A: CITY STANDARD AGREEMENT SAMPLE .....	15

# REQUEST FOR PROPOSALS

## 2021-2029 Housing Element Update

### A. INTRODUCTION

The City of Davis is seeking a qualified consultant (or consultant team) to assist staff with the preparation of the 2021-2029 Housing Element Update.

#### (i) Overview and Background

The City of Davis, incorporated in 1917, is a municipal corporation operating under the general laws of the State of California. The City is committed to providing essential services, experiences and opportunities that enhance the quality of residents' lives, advancing economic development that yields safe, healthy, vital communities, and celebrating a culture of respect, diversity, and sustainability.

The Davis community values its high quality of life, including well-maintained parks, robust community services, safe streets and infrastructure, and effective city services. It is a unique area in its commitment to biking and environmental sustainability, its well-educated workforce, and its proximity to some of the most productive agricultural land in the world. The City is well-positioned for economic growth, attracting new investment and providing new opportunities for current and future residents.

Recent communication and outreach surveys and studies have indicated key Davis community values:

- The City of Davis **cares about the needs** of City residents. It is our highest priority to provide residents with high quality city services, foster strategic partnerships and create opportunities to encourage positive growth and local prosperity.
- The City of Davis **provides essential services, experiences and opportunities** that enhance the high quality of all residents' lives.
- The City of Davis **values community input and engagement**, and will respond to residents with a tailored, high-touch, customer service-oriented approach.
- The City of Davis **invests in infrastructure improvements and public safety projects and services** to better people's daily lives and protect their well-being.
- The City of Davis **values and celebrates a culture of respect, diversity, and inclusivity**.

#### (ii) Purpose of Project

State law requires that all cities and counties prepare a Housing Element every five or eight years to plan for meeting the housing needs of all people in the community. The current Housing Element (2013-2021) was certified by the California Department of Housing and Community Development (HCD) in 2013. The 2021-2029 Housing Element will analyze the City's progress toward meeting the housing goals put forward in the 2013-2021 Housing Element.

The Housing Element must assess the City's current and future housing needs and identify enough adequate housing sites to meet those needs within the 2021-2029 planning period. The Housing Element also evaluates the City's current regulatory systems to assess whether they create unnecessary constraints on housing production at all affordability levels.

Since the adoption and certification of the 2013-2021 Housing Element, several new housing laws have been enacted that aim to further remove barriers to housing production and incentivize the development of housing, particularly affordable housing. The 2021-2029 Housing Element Update shall incorporate all new requirements and provide the City with a guide toward achieving the State's housing goals.

There will likely be a commission to act as the lead advisory body. Following selection, staff and consultant will develop a full schedule to engage other city advisory commissions in the process so all commissions, stakeholders and community members will be given ample opportunity to have significant involvement and input throughout the process. A key component of consultant selection will be a robust community engagement process, and the team's background and experience in this area.

### **(iii) Term of Contract**

The term of the contract is expected to be approximately 18 months.

## **B. SCOPE OF SERVICES**

### **(i) Anticipated Timeline**

HCD must review and certify the Housing Element by May 31, 2021. The project schedule should include ample time for a robust community outreach program. Implementation programs requiring assistance from the consultant may be completed following certification of the Housing Element.

### **(ii) Existing Documents**

- 2013-2021 Housing Element Update: <https://www.cityofdavis.org/city-hall/community-development-and-sustainability/planning-and-zoning/housing-element-update-2013-2021>
- Downtown Plan Public Draft, 2019: <https://www.cityofdavis.org/city-hall/community-development-and-sustainability/planning-and-zoning/downtown-davis-plan/draft-specific-plan-and-comments>
- General Plan: <https://www.cityofdavis.org/city-hall/community-development-and-sustainability/planning-and-zoning/general-plan>
- Zoning Ordinance: <http://qcode.us/codes/davis/view.php?topic=40&frames=on>

Notwithstanding the inclusion of services in this RFP, the final scope of services negotiated between the City and the successful Proposer shall be set forth in the Professional Services Agreement

("Agreement") executed by and between the City and the successful Proposer. A copy of the Agreement is attached hereto as Appendix A and incorporated herein by this reference.

## C. PROPOSAL REQUIREMENTS

Consultant firms interested in submitting a proposal for this project should respond to this RFP with a written proposal providing all the information requested. The proposal will be considered complete only if all of the items listed in this section are included. The proposal shall use a minimum 12-point font size.

### (i) Cover Letter of Interest

Please submit a Cover Letter of Interest signed by a duly authorized officer or representative of the Respondent, not to exceed one page in length. The Cover Letter of Interest must also include the following information:

- The principal place of business and the contact person, title, telephone numbers and email address.
- A brief summary of the qualifications of the Respondent and team.
- Description of organization (i.e. Corporation, Limited Liability Company, or Joint Venture).
- Teams/firms submitting proposals in response to this RFP must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm or other persons relative to the services to be awarded pursuant to this RFP. If a team/firm has no conflicts of interest, a statement to that effect shall be included in the cover letter.

### (ii) Proposal Content

**Scope of Work.** In a maximum of 20 pages, double sided (so 10 of sheets of paper), please include a description of the firm and its qualifications for providing services to meet the needs outlined in this RFP. This should convey the respondent's understanding of the work, and demonstrate specialty experience, management, and other features that lead to successful achievement of the City's goals. This section shall include the respondent's specific tasks for performing the work.

Please address how you would approach this project and reflect on what you know about the Davis community and what you think is important in this project.

Include a list of deliverables. Deliverables should match milestones shown in the proposed schedule. The schedule should be provided in MS Project, Gantt Chart or other comparable format.

The City is seeking consultant services to update the City's Housing Element to comply with State housing element law by a deadline of May 31, 2021. The 2021-2029 Housing Element Update will provide recommendations for ways for the City to remove barriers to and incentivize the development of housing needed to meet the City's growth needs for the period between 2021 and 2029. The

updated Housing Element should be reader friendly with clear strategies to enable the City and the community to achieve housing production goals and comply with all applicable housing legislation that has been enacted since the last housing element cycle.

The City is seeking proposals that generally reflect the following scope, though consultants are strongly encouraged to suggest refinements and innovative methodologies that ultimately achieve the work products described below. City staff will work closely with the selected consultant and are prepared to contribute to in-house task assistance. The proposal should indicate which tasks would be appropriate and/or desirable for City staff to complete.

1. Project Schedule

Identify major milestones and provide a schedule that allow for review and certification by the Department of Housing and Community Development by May 31, 2021.

2. Community Outreach and Engagement Program

Develop a comprehensive community engagement plan based on successful outcomes and experiences with similar projects in other communities. Provide adequate time for outreach and robust community outreach, including planning for Commission and stakeholder engagement.

3. 2021-2019 Housing Element

Prepare the 2021-2019 Housing Element that complies with all applicable State housing element law, including all legislation effective as of January 1, 2020 using appropriate guidance from the Governor's Office of Planning and Research (OPR) General Plan Guidelines and the HCD Building Blocks. Specific components include the following:

a. Evaluation of Existing Housing Programs

Government Code Section 65588 requires that the City analyze (1) the effectiveness of the prior Housing Element, (2) significant differences between what was planned in the prior Housing Element and what was achieved, and (3) how the updated Housing Element is being changed to incorporate what has been learned from the prior Housing Element.

b. Housing Needs Assessment

Complete an analysis of the City's existing, projected, and special housing needs, including its share of the Regional Housing Needs Allocation (RHNA).

c. Site Inventory and Analysis

Using data and assistance from City staff, prepare an inventory of land suitable for residential development, including vacant and underutilized sites having the potential for redevelopment pursuant to Government Code Sections 65583.2 and 65863 that meets the City's share of the Regional Housing Needs Assessment (RHNA) adopted by the Sacramento Area Council of Governments (SACOG) in November 2019. The analysis should identify zoning and public facilities and services for the identified sites.

- d. Constraints  
Complete an analysis that identifies potential and actual government and non-governmental constraints to the maintenance, improvement, and development of housing within the City.
  - e. Revised and New Housing Programs  
Evaluate the programs from the prior Housing Element and work with City staff to determine, which programs, if any, should be continued, revised, or removed as part of the update. The 2021-2029 Housing Element Update will also provide recommendations for new programs that will assist the City in providing adequate housing sites to meet its share of the RHNA, comply with State housing law, and meet its housing goals.
4. Coordination with HCD  
The City requests that the consultant lead the effort to coordinate with HCD on requesting technical assistance and policy guidance, as well as review and requested revisions to the Housing Element from HCD.
  5. Deliverables  
The list of deliverables shall include, at a minimum, the following:
    - a. Community Outreach and Engagement Plan
    - b. Administrative Draft Housing Element
    - c. Public Review Draft Housing Element incorporating comments on Administrative Draft Housing Element from City staff
    - d. Revised Public Review Draft
    - e. Final Housing Element incorporating comments on Draft Housing Element from HCD and any other parties that provide comments.

### **Optional Tasks**

The consultant may also recommend tasks not specifically called for in this proposed scope of work that would enhance and assist in the implementation of the 2021-2029 Housing Element Update. The City may choose to add any of these tasks to the scope of work for the project as part of a separate contract as optional tasks, though the City is under no obligation to do so. The consultant should provide a list of recommended optional tasks along with cost estimates for each. The City is not requesting assistance with environmental review pursuant to CEQA at this time. Some possible optional tasks include, but are not limited to, the following:

1. General Plan Amendment  
A General Plan Amendment to incorporate the 2021-2029 Housing Element Update. This task will also identify any portions of the City's existing General Plan that will need to be updated to be consistent with the 2021-2019 Housing Element Update and recent housing legislation, including but not limited to: goals, policies, implementation programs, maps, tables, background information, etc.

2. Citywide Rezone Program

A Citywide Rezone Program will likely be required for the City to identify an appropriate number of housing sites to comply with its share of the RHNA. This task can be completed after May 31, 2021.

**Key Personnel.** In a maximum of 10 pages, provide an organization chart, and for each key team member, provide the following:

- Qualifications and their experience on similar projects
- Role and responsibilities for this project
- Home office location
- Estimate of time allocation to the study (averaged over the duration of the project).

If sub-consultants will be used, provide names, qualifications, experience, location, and role of each sub-consultant.

**Project List.** In a maximum of 6 pages, provide references for projects that demonstrate proposer's qualifications and experience for performing the requested services. The reference projects should be linked to the staff listed in Key Personnel.

**References.** In a maximum of 2 pages, please include names, emails and telephone numbers of at least three (3) of your firm's previous clients whom the City staff may contact for references regarding the past performance of your firm, project managers, team members and sub-consultants proposed for this project.

**Fee Schedule.** Compensation will be on a time and expense basis. If the proposer finds that additional tasks not specifically described in the proposed scope of work would be necessary and/or appropriate to achieve the project objectives, please propose a list of optional tasks with additional costs that the City might consider, subject to approval by City Council.

Provide:

- Estimated fee by task (tasks should match scope of services section)
- Hourly billing rate schedule for all proposed staff
- Types and estimated amount of expenses to be billed to the project
- Fees by sub-consultant, by task

**Evidence of Insurance.** The Proposer shall provide a summary of the firm's current insurance coverage for comprehensive, general liability, professional liability, automotive liability and worker's compensation insurance. Indicate the limits of coverage on each policy. City required endorsements and minimum coverage limits must be provided at time of agreement execution.



Type of Insurance	Description	Amount
Commercial General Liability (CGL)		
Automobile Liability		
Workers' Compensation		
<b><i>If applicable</i></b>		
Professional Liability (Errors and Omissions)		
Other Insurance Provisions		

**Acceptability of Terms and Conditions for the City Standard Agreement.** Please refer to our standard agreement included as Appendix A. Any proposed deviations and modifications to the agreement should be noted, with reasons given. Proposed agreement changes will require City Attorney approval. The City will not consider changes to the agreement once the selection process has been completed.

## D. PROPOSAL SUBMISSION REQUIREMENTS

Please email a PDF copy of your proposal at your earliest convenience, but no later than Friday, May 29, 2020 at 4pm to:

Sherri Metzker, Principal Planner, at [smetzker@cityofdavis.org](mailto:smetzker@cityofdavis.org) and Jessica Lynch, Senior Planner, at [jlynch@cityofdavis.org](mailto:jlynch@cityofdavis.org).

Please note, the City will not accept incomplete proposals, proposals submitted after the submittal due date and time, or proposals submitted via facsimile, unless otherwise noted. In addition, the City's offices are currently closed due to stay-at-home orders from Yolo County and the State of California due to COVID-19. Planning staff is working remotely and is available to answer questions, so contact via email is preferable.

## E. EVALUATION CRITERIA AND SCORING

The City will evaluate proposers based on the following criteria:

<b>Criteria</b>	<b>Points Possible</b>
Quality, completeness and responsiveness of proposal; demonstrated understanding of scope of work	30
Community engagement approach, creativity and comprehensiveness; ability to work with staff, HCD, stakeholders, local experts and commissions	30
Related and recent Housing Element experience of similar scope and complexity	20
Expertise of the assigned project team (in-house or with sub-consultants) and previous successful working relationships	10
Availability and staffing to complete the project within the timeline	10
<b>Total Points</b>	<b>100</b>

## F. SELECTION PROCESS AND ESTIMATED SCHEDULE

Proposals will be reviewed to determine if the applicant meets the minimum qualifications necessary to complete the Scope of Services required for the Project. Proposals not meeting minimum qualifications will be disqualified from further consideration at the sole discretion of the City. The City may seek written clarification from any or all Proposers in order to better understand and evaluate the proposed solutions. This process may not be used as an opportunity to submit missing documentation or to make substantive revisions to the original proposal.

The City of Davis will appoint an evaluation team that will review and evaluate the proposals and will make a final recommendation based on the provided materials and references contacted. Interviews may be conducted if needed. Please note that due to current stay-at-home orders, the City may conduct interviews by phone or online video conference. More information will be available for Proposers who are selected to interview.

## G. PROPOSAL SCHEDULE

The tentative schedule is as follows:

Anticipated Timeline	Steps
April 24, 2020	RFP released to the public
2 weeks from release of RFP (May 8, 2020)	Deadline for questions sent via email to smetzker@cityofdavis.org and/or jlynch@cityofdavis.org
1 week from deadline for questions (May 15 2020)	Responses to questions (if applicable)
May 29, 2020 at 4pm (5 weeks after release of RFP)	Proposal submission deadline
3-4 weeks after deadline for proposals	Proposal evaluations and interview(s) for top candidate(s) (if applicable)
4 weeks from interviews	City Council meeting to approve company selection and budget, authorize City Manager to execute a contract.

The above scheduled dates are tentative and City retains the sole discretion to adjust the above schedule or cancel all or any part of the same.”

## H. COMPANIES BEING SENT THIS RFP

While any qualifying company can respond to this request for proposals, the City sent this RFP to the following consulting firms for their consideration:

- AECOM
- Ascent Environmental, Inc.
- Placeworks
- Veronica Tam & Associates

This RFP is also being posted on the City’s website.

## I. NO OBLIGATION

The City reserves the right to modify this RFP package at any time prior to the proposal due date, or to extend the proposal due date, or to cancel this RFP package at any time. The City further reserves the right to reject any and all proposals for any reason or to accept any qualifying proposal received which the City, in its sole unrestricted discretion deemed most advantageous to itself. The lowest or any proposal may not necessarily be accepted. The respondent acknowledges the City's rights and this clause and absolutely waives any right of action against the City for the City's failure to accept its proposal whether such right of action arises in contract, negligence, bad faith or any other cause of action. The acceptance of any proposal is subject to funds being legally available to complete this transaction and/or approval by the City Council or the officer or employee of the City having authority to accept the proposal.

The City of Davis is not responsible for any loss, damage or expense incurred by a respondent as a result of any inaccuracy or incompleteness in the RFP, or as a result of any misunderstanding or misinterpretation of the terms of this RFP on the part of the Respondent. Further, the City of Davis is not liable for any costs incurred in the preparation of the proposal submittals.

## J. MISCELLANEOUS

### **Confidentiality of Proposal**

Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this RFP shall be held confidential by City and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code section 6250 *et seq.*) until after either City and the successful proposer have completed negotiations and entered into an Agreement or City has rejected all proposals. All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act. Furthermore, the City will have no liability to the Proposer or other party as a result of any public disclosure of any proposal or the Agreement. If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City is not in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

**Exceptions Certification**

In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the attached Agreement and, in particular, the insurance and indemnification provisions therein. Failure to include any exceptions to the RFP, including the Agreement, shall be deemed an acceptance of all terms therein by Proposer and Proposer shall not have any further opportunity to request revisions to the same following submission of its proposal.

**Amendments to Proposals**

No amendment, addendum or modification will be accepted after a proposal has been submitted to City. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to City prior to the proposal due date and time.

**Cancellation of RFP**

City reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.

**Price Validity**

Prices provided by Proposers in response to this RFP are valid for 90 days from the proposal due date. The City intends to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete and the contract is awarded.

**No Commitment to Award**

Issuance of this RFP and receipt of proposals does not commit the City to award a contract. City expressly reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or any part of this RFP.

**Right to Negotiate and/or Reject Proposals**

City reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of City, such action shall serve its best interests and those of the tax-paying public. The Proposers are encouraged to submit their best prices in their proposals, and City intends to negotiate only with the Proposer(s) whose proposal most closely meets City's requirements at the lowest estimated cost.

**Prevailing Wage**

Proposers shall take cognizance of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing

Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public work” and “maintenance” projects. The Proposer must agree to fully comply with and to require its subcontractors/subconsultants to fully comply with such Prevailing Wage Laws to the extent applicable.

## **K. QUESTIONS**

Questions about this RFP should be made in writing and emailed to Sherri Metzker, Principal Planner, at [smetzker@cityofdavis.org](mailto:smetzker@cityofdavis.org) or Jessica Lynch, Senior Planner, at [jlynch@cityofdavis.org](mailto:jlynch@cityofdavis.org). All requests for information or questions must be submitted by 4:00 pm on May 8, 2020. Questions submitted after the due date or via phone will not be accepted. All questions and answers will be published.

# APPENDIX A: CITY STANDARD AGREEMENT SAMPLE

## CITY OF DAVIS PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Davis, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 23 Russell Boulevard, Davis, CA 95616 (“City”), and [\*\*\*INSERT NAME\*\*\*], a [\*\*\*INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY\*\*\*] with its principal place of business at [\*\*\*INSERT ADDRESS\*\*\*] (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

### RECITALS

A. City requires provision of the following professional services:

---

all as more fully set forth and described in this Agreement.

B. Consultant is duly licensed and/or otherwise fully authorized by law, and has the necessary experience and qualifications, to provide such services. City enters this Agreement in substantial reliance on such experience and qualifications.

C. The Parties enter this Agreement in order to set forth terms and conditions governing Consultant’s performance of the services described herein.

### AGREEMENT

#### NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Scope of Services.

Consultant shall perform the services generally described in (i) the Scope of Services attached hereto as Exhibit “A”; (ii) any applicable request for proposals issued by the City; and (iii) as otherwise required by this Agreement, all to City’s satisfaction (collectively, “Services” herein.)

2. Compensation.

a. Subject to Section 2.b, below, the City shall pay for the Services satisfactorily performed, in accordance with the Schedule of Rates/Payments set forth in Exhibit “B”, attached hereto.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$\_\_\_\_\_ [Insert maximum amount of compensation]. This amount covers and is inclusive of all labor, materials, and any and all other costs incurred by Consultant in performing the Services, unless otherwise agreed upon in writing. Consultant shall be deemed to have made all necessary inquiries and site inspections prior to

agreeing to perform the Services. Periodic payments for undisputed work shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

The Parties may agree on additional work to be provided as part of the Services. An amendment to this Agreement shall be prepared by the City and executed by both Parties authorizing such additional work and compensation therefor, prior to such work being performed.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available for review by the City at all reasonable times during the term of this Agreement and for four (4) years from the date of final payment by City.

5. Term; Time of Performance.

The term of this Agreement shall commence on the date first set forth above and shall expire on **[Insert end date]**, unless extended or earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established and agreed upon schedules and deadlines agreed upon in writing. **Consultant shall commence work within three (3) business days of receiving City's verbal or written notice to proceed.** Consultant represents that it has the professional and technical personnel required to satisfactorily perform the Services as required by this Agreement. All indemnification provisions of this Agreement shall survive and remain in effect following the termination of this Agreement. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

6. Delays in Performance.

l. Force Majeure. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by force majeure events. Force majeure events mean and refer to circumstances beyond the reasonable control of the non-performing party including, but not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint. Consultant's lack of financial capability, in the absence of any of the foregoing events, shall not constitute a force majeure event.

m. Should a force majeure event occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.



a. Consultant shall comply with all applicable laws, ordinances, statutes, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. City may, but is not required, to assist Consultant in obtaining and maintaining all permits required of Consultant by federal, state and/or local regulatory agencies.

c. If applicable, and unless otherwise provided in the Scope of Services, Consultant is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care.

Consultant's Services shall be performed in accordance with the generally accepted professional standards of practice and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently performing similar services under similar conditions. Consultant shall, at all times herein, possess any and all State of California and/or federal professional licenses and certifications, as applicable, required to lawfully perform the Services.

9. Assignment and Subcontracting.

Consultant shall not assign or transfer this Agreement or any rights or obligations under, or any interest in this Agreement, or subcontract any required performance hereunder, without the prior written consent of the City, which may be withheld for any reason. The Services required to be performed by the Consultant are personal to the Consultant. Any attempt to so assign, transfer, or subcontract without such consent shall be void and without legal effect and shall constitute grounds for termination. Authorized subcontracts, if any, shall contain a provision making the subcontractor subject to all requirements of this Agreement.

10. Independent Contractor.

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant is or shall become an employee of City. The work to be performed shall be in accordance with the Scope of Services described in this Agreement, subject to such directions and amendments from City as herein provided.

a. All work and other Services provided pursuant to this Agreement shall be performed by Consultant or by Consultant's employees or other personnel under Consultant's supervision, and Consultant and all of Consultant's personnel shall possess the qualifications, permits, and licenses required by State and local law to perform the Services, including, without limitation, a City of Davis business license as required by the Davis Municipal Code. Consultant will determine the means, methods, and details by which Consultant's personnel will perform the Services. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Services and compliance with the customary professional standards.

b. All of Consultant's employees and other personnel performing any of the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as an employee of City; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the Services under this Agreement. Consultant shall acquire and maintain at its sole cost and expense such vehicles, equipment and supplies as Consultant's personnel require to perform any of the Services required by this Agreement. Consultant shall perform all Services off of City premises at locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of any Services under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform such Services. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about or to check on the status of projects pertaining to the Services under this Agreement.

c. Consultant shall be responsible for and pay all wages, salaries, benefits and other amounts due to Consultant's personnel in connection with their performance of any Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, State, or federal policy, rule, regulation, statute or ordinance to the contrary, Consultant and its officers, employees, agents, and subcontractors providing any of the Services under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by City, including but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") or any other retirement program, as an employee of City, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits or any other retirement benefits.

d. To the maximum extent permitted by laws, Consultant shall indemnify, defend and hold harmless the City and other Indemnitees (as defined in Section 13.a herein), from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provision of this Section 10, or any of Consultant's personnel practices. In addition to all other remedies at law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification obligation arising under this Section. The duty of indemnification set forth in this Section is in addition to all other indemnification provisions of this Agreement.

11. PERS Compliance and Indemnification.

a. **General Requirements.** The Parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in providing its employees and any other personnel to City to perform any work or other Services under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code § 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Consultant shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

b. **Indemnification.** To the maximum extent permitted by law, Consultant shall defend, indemnify and hold harmless City, and the other Indemnitees (as defined in Section 13.a herein) from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provision of this Section 11.

12. **Insurance.** Unless otherwise permitted in writing by City's Risk Manager, Consultant shall not commence work for the City until it has secured all insurance required under this section and provided evidence thereof that is acceptable to the City. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) (by deletion of this exclusion)
- (7) Contractual Liability with respect to this Agreement
- (8) Broad Form Property Damage

(9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall be endorsed to name the City, its elected and appointed officials, officers, employees, agents, servants, designated volunteers and agents serving as independent contractors in the role of City officials, as additional insureds using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) Subject to the City's written approval, the general liability coverage may utilize deductibles or provide coverage excess of a self-insured retention, provided that such deductibles shall not apply to coverage of the Additional Insureds.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall be endorsed to name the City, its officials, officers, employees, agents and City designated volunteers as additional insureds.

(iv) Subject to the City's written approval, the automobile liability coverage may utilize deductibles or provide coverage excess of a self-insured retention, provided that such deductibles shall not apply to coverage of the Additional Insureds.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that Consultant is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she/it will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the

“Workers’ Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer’s Liability Coverage in amounts indicated herein. Consultant shall require all subcontractors to obtain and maintain, for the period required by this Agreement, workers’ compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and with the limits required herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy coverage form specifically designed to protect against acts, errors or omissions of the Consultant in the performance of professional services. “Covered Professional Services” as designated in the policy must specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend.

- e. **[\*\*\*INSERT\*\*\*] Liability Insurance [CHECK WITH RISK MANAGER AND JPIA TO DETERMINE IF ADDITIONAL LIABILITY INSURANCE SHOULD BE REQUIRED FOR A PARTICULAR PROFESSIONAL SERVICES AGREEMENT, SUCH AS CYBER LIABILITY, ETC.]**

At all times during the performance of the work under this Agreement the Consultant shall maintain \_\_\_\_\_ **[\*\*\*INSERT AS APPROPRIATE\*\*\*]**.

f. Minimum Policy Limits Required

- (i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence (any auto) for bodily injury and property damage
Workers’ Compensation	In the amount required by California law.
Employer’s Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)
<b>[***INSERT OTHER LIABILITY***]</b>	\$ _____

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

g. Evidence Required

Prior to execution of the Agreement, Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

h. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, Consultant shall deliver renewal certificate(s) including the required Additional Insured endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Liability Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any additional insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. If a "claims-made" professional liability policy is provided, it shall include an extended reporting period of not less than three (3) years.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its elected and appointed officials, officers, employees, agents, servants, designated volunteers and agents serving as independent contractors in the role of City officials, or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

i. Each policy of insurance required herein shall be from a company or companies having a current A.M. Best's rating of no less than A:VII and admitted and authorized to transact the business of insurance in the State of California.

j. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may terminate this Agreement for cause.

(iii) City may require Consultant to provide for inspection by City, complete copies of all insurance policies in effect for the duration of the Agreement.

(iv) No City elected or appointed official, officer, employee, agent or volunteer shall be personally responsible for any liability arising under or by virtue of this Agreement.

(v) The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Consultant under this Agreement.

k. Subcontractor Insurance Requirements

Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name the City, its elected and appointed officials, officers,

employees, agents, servants, designated volunteers and agents serving as independent contractors in the role of City officials as additional insureds, using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors.

13. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by City), indemnify and hold the City, its elected and appointed officials, officers, attorneys, agents, employees, servants, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees" in this Section 13) free and harmless with respect to any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages, stop notices and/or injury of any kind, in law or equity, to property or persons, including bodily injury, wrongful death, personal injury and property damage, in any manner arising out of, pertaining to, or incidental to any acts, errors, omissions, or willful misconduct of Consultant, its owners, officials, officers, employees, servants, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, and/or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, or by the City or any of the other Indemnitees.

b. For Design Professional Services. If Consultant's Services hereunder include the performance of design professional services by a "design professional", (as defined below), then to the extent permitted by law, Consultant shall, at its sole cost and expense, indemnify and hold the City and other Indemnitees, and each of them, harmless with respect to any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense, to the extent arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness, or willful misconduct of the Consultant, and/or its officers, agents, employees, servants, subcontractors, contractors or their officers, agents, employees, servants, contractors or subcontractors (or any entity or individual for whom the Consultant shall bear legal liability) in the performance of design professional services under this Agreement. Notwithstanding the foregoing and as required by Civil Code Section 2782.8(a), in no event shall the cost to defend the Indemnitees that is charged to Consultant, exceed the Consultant's proportionate percentage of fault.

For purposes of this Section 13.b, and in accordance with Civil Code Section 2782.(a), "design professional" means only the following and only while performing professional design services: (i) an individual licensed as an architect pursuant to Business and Professions Code Section 5500, et seq., and a business entity offering architectural services in accordance with that Code section; (ii) an individual licensed as a landscape architect pursuant to Business and Professions Code Section 5615, et seq., and a business entity offering landscape architectural services in accordance with that Code section; (iii) an individual registered as a professional engineer pursuant to Business and Professions Code Section 6700, et seq., and a business entity offering professional engineering services in accordance with that Code section;



and (iv) an individual licensed as a professional land surveyor pursuant to Business and Professions Code Section 8700, et seq., and a business entity offering professional land surveying services in accordance with that Code section.

c. The provisions of this Section 13 shall survive the termination of this Agreement.

14. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq. and 1770, et seq., which require the payment of prevailing wages and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with the Prevailing Wage Laws. These rates are on file with the City Clerk or may be obtained at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

(i) Copies of the prevailing wage rates may be obtained at cost at the City Clerk's office. Consultant shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

(ii) Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code Section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of this Agreement and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and

1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of the Services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

15. Living Wage Ordinance.

a. Consultant agrees to comply with Davis Municipal Code Chapter 15.20, the City of Davis Living Wage Ordinance. If Consultant employs six (6) or more employees, and receives \$25,000 or more from the City pursuant to this Agreement and any other contracts with the City during a twelve month period, Consultant shall be required to provide all employees eligible under Chapter 15.20 with the minimum compensation set forth in Davis Municipal Code Section 15.20.060 during the term of this Agreement.

b. Prior to commencement of any work under this Agreement, Consultant and all subcontractors that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the City that Consultant and subcontractors are providing all eligible employees the minimum compensation required pursuant to Davis Municipal Code Section 15.20.060. Additionally, prior to commencement of any work, Consultant shall notify in writing all employees that are eligible for minimum compensation of their rights under Chapter 15.20.

c. Consultant shall maintain all records and documents necessary to establish whether Consultant is subject to Chapter 15.20. If Consultant is subject to the requirements of Chapter 15.20, Consultant shall further be required to maintain monthly records of Consultant's employees, including records showing the hourly rate paid to each employee, the amount paid by Consultant for health benefits, if any, and the amount of days off provided per year for sick leave, vacation, or personal necessity. The records described in this subsection shall be made available to the City upon request. The failure to produce these records within three (3) business days following request by the City shall be a default under this Agreement.

d. Consultant shall include the requirements of Chapter 15.20 in any and all agreements with subcontractors hired to provide the Services pursuant to this Agreement. Any and all subcontractors retained by Consultant to provide the Services pursuant to this Agreement that employ six or more employees and receive \$25,000 or more for the Services provided to the City pursuant to this and any other City contracts during a 12-month period shall be required to comply with the terms of Chapter 15.20. Failure by a subcontractor subject to the requirements

of Chapter 15.20 to comply with the terms of Chapter 15.20 shall constitute a default of the Consultant under this Agreement.

16. Use of Recycled Paper. Consultant shall comply with the City's policy on the use of recycled paper, as set forth in Exhibit "C" of this Agreement.

17. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California without regard for change of venue laws. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Yolo, State of California. Consultant must comply with the claim procedures set forth in Government Code section 900, et seq. prior to filing any lawsuit against the City.

18. Termination.

a. City has the right to terminate any portion or all of the Services under this Agreement with or without cause, by giving ten (10) calendar days' prior, written notice to Consultant. In such event, City shall be immediately given title to and possession of all Work Product and original field notes, drawings and specifications, written reports and all other documents produced or developed pursuant to this Agreement. Provided Consultant is not then in breach, City shall pay Consultant the reasonable value of services rendered for any portion of the Services completed prior to termination. If said termination occurs prior to completion of any specific task for which a payment request has not been received, the charge for Services performed shall be the reasonable value of such Services, based on an amount agreed to by City and Consultant. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services or services within the Scope Services performed prior to the effective date of this Agreement, and shall not be entitled to damages or compensation resulting from such termination of the Services.

b. Consultant may terminate its obligation to provide services under this Agreement by serving written notice of termination to the City, provided Consultant has first served the City with a written notice of default and demand to cure, and City has failed to cure such default within thirty (30) days of receipt of such notice.

19. Ownership of Work Product.

a. Except as otherwise provided in Section 18, "Termination", above, and unless otherwise agreed upon in writing, all draft and final reports, documents, and other written material, and any and all images, ideas, concepts, designs including website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Consultant in the performance of this Agreement (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of City. All Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City upon final payment being made provided that

any such use shall be at City's sole risk. Consultant shall not obtain or attempt to obtain copyright protection as to any of the Work Product.

b. Consultant hereby assigns to City all rights of ownership to the Work Product, including any and all related intellectual property and proprietary rights that are not otherwise vested in the City pursuant to subsection (a), above.

c. Consultant warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment or Consultant's default, City shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. Consultant shall defend, indemnify and hold City, and the other Indemnitees (as defined in Section 13(a), above) harmless from any and all loss, claim or liability in any way related to a claim that City's use of any of the Work Product violates federal, state or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products, ideas or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Work Product produced under this Agreement. In the event the use of any of the Work Product or other deliverables hereunder by City is held to constitute an infringement and the use of any of the same is enjoined, Consultant, at its expense, shall: (a) secure for City the right to continue using the Work Product and other deliverables by suspension of any injunction, or by procuring a license or licenses for City; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. This covenant shall survive the termination of this Agreement.

20. Party Representatives.

Consultant hereby designates \_\_\_\_\_, or his or her designee, as Consultant's Representative for this Agreement, unless and until written notice of a new representative acceptable to City is provided to City. City hereby designates \_\_\_\_\_, or his or her designee, as City's Representative for this Agreement. The foregoing Representatives shall be authorized to approve non-monetary revisions to this Agreement, provide consent where required herein, and to make other administrative decisions that will be binding on their respective Party, except as otherwise specifically required herein.

21. Notices.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Davis  
23 Russell Boulevard

CONSULTANT:

\*\*\*INSERT NAME, ADDRESS & CONTACT  
PERSON\*\*\*

Davis, CA 95616

Attn: **\*\*\*INSERT NAME & DEPARTMENT\*\*\***

and shall be effective upon receipt thereof.

22. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement.

This Agreement, with its exhibits, all of which are incorporated by reference herein, and all documents incorporated by reference, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement. In the event of any conflict or inconsistency between the provisions of this Agreement and any exhibit hereto or document incorporated by reference herein, the provisions of this Agreement shall govern.

25. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

26. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specified in writing, and any such waiver shall be limited to that set of circumstances and not to any future circumstances unless another written waiver is executed.

28. Time of Essence.

Time is of the essence in each and every provision of this Agreement.

29. City's Right to Employ Other Consultants.

City reserves its right to employ other consultants to provide the Services or similar services to the City.

30. Interest of Consultant.

Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City.

31. Interest of Subcontractors.

Consultant further covenants that, in the performance of this Agreement, no subcontractor or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided City with a list of all subcontractors and the key personnel for such subcontractors that are retained or to be retained by Consultant in connection with the performance of the Services, to assist the City in affirming compliance with this Section.

32. Prohibited Interests.

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. If required, Consultant further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF DAVIS  
AND [\*\*\*INSERT NAME\*\*\*]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF DAVIS

[INSERT NAME OF CONSULTANT]

By: \_\_\_\_\_  
Mike Webb  
City Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

(Two signatures required for corporations pursuant to California Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)

ATTEST:

By: \_\_\_\_\_  
Zoe S. Mirabile, CMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Inder Khalsa  
City Attorney

EXHIBIT A  
Scope of Services



EXHIBIT B

Schedule of Rates/Payments

Consultant will invoice City on a monthly cycle, or otherwise as expressly provided in this Agreement. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task, as applicable. Prior to undertaking any work outside of the existing scope, Consultant will inform City, detailing what additional work is recommended and the associated cost. No out-of-scope work shall be performed without express written permission from City. Any other terms and conditions relating to the amount of compensation to be paid to Consultant are as follows:

**[Insert Hourly Rates and rates for any other charges to be made by Consultant]**

EXHIBIT C  
USE OF RECYCLED PAPER

All paper used for any reports that are required to be submitted under this Agreement shall be produced on recycled paper conforming to the minimum content standards as specified herein. All such reports shall have the front cover labeled in such a way as to clearly identify that the report was produced on recycled paper. Where practicable, the pages of all such reports shall be produced double-sided.

Definitions.

Postconsumer Material means only those paper products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid wastes for the purpose of collection, recycling, and disposition.

Recovered Paper Material means paper waste generated after the completion of a papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing wastes, cutting and other converting wastes, butt rolls and mill wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous wastes generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residues such as bark.

Minimum Content Standard. The following categories of paper must contain the minimum percentages of material listed under both "Recovered Material" and "Postconsumer Material" included within the total "Recovered Material" percentage. When utilizing a category of paper not listed below, the paper shall contain the highest percentage of recycled paper available.

<b>Article I. Paper Category</b>	<b>Article II. Minimum Percentage of "Recovered Material"</b>	<b>Article III. Minimum Percentage of "Postconsumer Material"</b>
Article IV. High-speed Xerographic	Article V. 50	Article VI. 30
Article VII. Bond Paper	Article VIII. 50	Article IX. 30
Article X. Cover Stock	Article XI. 50	Article XII. 30
Article XIII. Envelopes	Article XIV. 50	Article XV. 30

