



REQUEST FOR PROPOSALS
INDEPENDENT POLICE AUDITOR
FOR
THE CITY OF DAVIS
September 20, 2018

RESPONSE DEADLINE:
Friday, November 2, 2018
5:00 p.m.

REQUEST FOR PROPOSALS
INDEPENDENT POLICE AUDITOR
FOR
THE CITY OF DAVIS

The City Council of the City of Davis seeking applicants for those interested in becoming the Police Auditor for the City of Davis.

BACKGROUND

The city of Davis is located in Yolo County, in the Central Valley of northern California, 11 miles west of Sacramento and 72 miles northeast of San Francisco. Davis is home to the University of California, Davis, a world-class institution with 29,111 undergraduate students and 6,734 graduate and professional students. The total population of Davis is currently 68,740. Davis is a university-oriented city with a progressive and vigorous community noted for its small-town style, bicycles, energy conservation, environmental programs, parks, and the quality of its educational institutions. More information about the community can be found on the city's website at www.cityofdavis.org

Davis is a General Law city with a Council/Manager form of government and the following departments: Administrative Services, City Manager's Office, Community Development and Sustainability, Fire, Parks & Community Services, Police and Public Works.

In 2017, the City of Davis began conducting a process to develop a new system of civilian oversight for the City of Davis Police Department. Consultants were hired to

- Review the current system and historical documents.
- Hold public forums to solicit community input on the goals and guiding principles of oversight.
- Recommend options that would fit Davis based on size, history of policing and community needs.
- Provide possible scope of work for an auditor, with suggestions as to how it might change from what has been in place.

The auditor position was originally created in 2006 and became vacant in 2017. With recommendations from the consultants, the scope of the position has been modified and updated. For further background information, visit <https://cityofdavis.org/city-hall/city-manager-s-office/police-oversight>.

The police auditor is a contracted position, which is currently filled with an interim auditor. The position reports directly to the City Council with guidance from the City Manager.

Independent Police Auditor Responsibilities:

The following scope of work is intended to cover the range of tasks the Independent Police Auditor (IPA) may encounter or address over the course of the contract, with the

understanding that the amount of time spent on any one task may vary over time.

The IPA is a contract position with up to 30 hours of work each month and an assumed budget of \$60,000.00 – 80,000.00 per year. The IPA is required to be onsite at least two days a month and attend the monthly meetings of the Police Accountability Commission (PAC).

Specifically, the IPA will carry out the following tasks:

1. Review Davis Police Department (DPD) Misconduct Complaints
 - Receive notice of all complaints, classification and assigned investigator.
 - Receive complaints directly and refer them to the police department for investigation.
 - Receive real time updates on investigations for monitoring and to coordinate interviews, if needed.
 - At the discretion of the IPA, attend interviews of complainants, public witnesses, and sworn officers, asking questions directly (civilians) or through the lead investigator (police personnel).
 - Have full access to completed complaint investigation files; all evidence related to the issue, reports (as allowed by state law), analysis, proposed findings, and any proposed discipline.
 - Provide evaluations as to whether an investigation is complete, thorough, and objective; an explanation if more investigation or a change in finding is recommended;
 - Document any recommendations on policy, procedures, or training growing out of a complaint investigation.
 - If an external investigator is used, provide input into the scope of work of the investigator, and offer assistance in the selection of the investigator.
 - Work with the DPD and PAC to promote Alternative Conflict Resolution ACR /mediation as a complaint resolution option.

2. Audit Davis Police Department Misconduct Complaint and Discipline Process
 - The IPA will have access to the DPD complaint database and regularly assess issues such as the nature of complaints, how complaints are classified, and whether investigation timelines are met.
 - The IPA will have access to DPD personnel and discipline records and will assess the discipline system for fairness and appropriate levels of discipline.

3. Receive Notice of Death, Serious Injury, or Other Critical Incidents
 - The IPA will receive timely notification of critical incidents with authority to respond to the scene, if needed. Critical incidents include:
 - Officer-involved shootings, regardless of whether a person was hit by gunfire;

- A traffic collision involving police officers that result in death or serious bodily injury to another person;
 - A use of force resulting in death or serious bodily injury to another person; or
 - All deaths while an arrestee/detainee is in the custodial care of the Department unless there is no preliminary evidence of any of the following: misconduct, a use of force, or an act committed by an arrestee/detainee that appears intended to cause injury or death.
4. Audit Davis Police Department Policies, Procedures, and Training
- Collaborating with the PAC, the IPA should prioritize and audit DPD policies, procedures, or training related to these topics or other matters that may be identified and take precedence for auditing purposes. The following is not an exhaustive list of issues but indicative of what can be done.
 - Progress on meeting DPD Strategic Plan goals - in particular, goals with regards to training on procedural justice, the Guardian mindset, implicit/unconscious bias, and de-escalation
 - Progress on DPD compliance with CA Racial and Identity Profiling Act of 2015 (RIPA) requirements DPD stop data, using DPD data reported under RIPA and other appropriate sources
 - DPD enforcement actions with regards to the homeless
 - Compliance with the Surveillance Technology Ordinance
 - Individual use of force investigations, including Taser usage, and use of force aggregate data
 - Body camera usage by officers and review by supervisors, Professional Standards, etc.
5. Recommend Changes/Improvements to Policy, Procedure, or Training
- Work with the PAC to systematically review DPD existing policies and procedures and evaluate new or changed DPD policies.
 - Work with the PAC to systematically review DPD training.
 - With input from the PAC the IPA make written recommendations for improvements or changes to DPD policy, procedure, or training regarding any matter, with recommendations to the Police Chief.
6. Help Develop and Participate in Community Outreach
- Working closely with PAC, help develop a community outreach plan and participate in community outreach efforts to both educate the community about the work of oversight in Davis and to hear from the community about current policing concerns. The initial outreach plan should take into consideration the variety of stakeholder groups that participated in the community engagement process and how to use social media to keep community members informed.

7. Produce Reports

- Publish written reports in conjunction with the PAC, at least on an annual basis, to include information about misconduct complaint investigations and trends; recommendations concerning improvements to DPD policy, procedures, or training; results of audits; and joint projects with the PAC, including outreach.

8. Conduct independent investigations

- In cases in which the IPA deems an investigation insufficient or the DPD does not open an investigation, and recommendations for additional investigation are not heeded, after written notification to and concurrence from the City Manager and the City Attorney, the IPA may conduct additional or an independent investigation. The DPD will provide full access to all materials concerning the incident underlying the complaint and all relevant personnel.

9. Assess the work of the PAC

- Provide annual written input to the City Manager on the effectiveness of the PAC.

REQUEST FOR PROPOSALS

(1) INTRODUCTION – AREAS OF EXPERIENCE TO BE COVERED IN RFP

The city of Davis requests interested persons to submit a proposal to provide police auditor services for the city of Davis.

The City Council will determine the process by which the proposals are reviewed, although it is anticipated that the material provided in the proposal, interviews with the applicants, and/or interviews with references, will be the determinative factors in the final selection.

(2) REQUIREMENTS FOR PROPOSAL PACKAGES

Identification of Applicant. The response to this Request for Proposals should describe the applicant who would be responsible for providing services under the proposal. The proposal should identify the qualifications, areas of expertise, and prior experience..

References. The proposal should include references from comparable and representative clients. Among the references, include the names and telephone numbers of clients which the applicant has worked in the recent past.

Description of Services. The proposal should describe the services proposed, and in addition to overall experience, any areas of specialty and any special qualifications that are believed to distinguish them from other applicants. Additionally, the applicant should

identify how they propose working in conjunction with the City Council appointed Police Accountability Commission

Rates and Charges. The proposed means of compensation, including hourly rates or fees to be charged should be listed. A schedule of the rates or amounts for all fees, charges, and expenses should also be included.

Actual or Perceived Conflicts. The proposal should disclose the names, nature of assignment, and relevant dates for any of the applicant's clients who may have actual or perceived conflicts of interest with the City. The proposal should also provide a statement or description of applicant's policy to address how conflicts of interest are avoided.

Submission Requirements.

Respondents should submit an electronic version of the Proposal to cmoweb@cityofdavis.org.

Proposals are due no later than 5:00 pm on Friday, November 2, 2018.

(3) EVALUATION CRITERIA

The experience and qualifications of the applicants will be the primary criteria used to evaluate the proposal, followed by the proposed rates.

(4) PROCESS FOR SELECTING THE INDEPENDENT POLICE AUDITOR

The City Council will determine a procedure to review each proposal. Calls to submitting applicants and their references may be made to clarify material in the submittals. Based upon this review, the best qualified applicants may be invited to a personal interview. Following the interviews, thorough background and reference interviews may be conducted. A selection of the police auditor will be made following a careful evaluation of all relevant information.

(5) RESERVATIONS AND OPTIONS

The City Council reserves the rights and options to:

- Reject any or all of the submittals
- Waive any of the provisions of the Request for Proposals
- Issue subsequent Requests for Proposals
- Cancel the Request for Proposals process
- Waive technical error in the responses it receives
- Negotiate with any, all, or none of the respondents to this Request for Proposals.

For questions contact:

Carrie Dyer

City Manager's Office

cdyer@cityofdavis.org

530-747-5863

CITY OF DAVIS

COVER CHECKLIST—AGREEMENT FOR CONSULTANT SERVICES

Remove this checklist prior to execution of Contract

- ___ 1. Introductory Paragraph: Insert Date
- ___ 2. Introductory Paragraph: Insert name of Consultant and form of legal entity
- ___ 3. 1st Recital: Insert general types of services provided by Consultant
- ___ 4. 2nd Recital: Insert name of Project
- ___ 5. Sec. 1.1: Insert brief description of Services to be provided by Consultant
- ___ 6. Sec. 2.1: Insert City Project Manager
- ___ 7. Sec. 2.2: Insert Consultant Representative
- ___ 8. Sec. 3.4: Insert names of Key Personnel for Consultant, or replace language with “Intentionally Omitted”
- ___ 9. Sec. 3.10.3: Determine whether Profession Liability Insurance language is necessary. If not necessary replace with “Intentionally Omitted.”
- ___ 10. Sec. 4.1: Insert written and numerical dollar amount for Not to Exceed Amount
- ___ 11. Sec. 6.6: Insert contact information for Consultant and City
- ___ 12. Sec. 6.15: Confirm that Consultant has provided a list of all subconsultants and key personnel for all subconsultants per requirement of section 8.14, to confirm no conflict of interest.
- ___ 13. Exhibit A: Insert Scope of Services
- ___ 14. Exhibit B: Insert Facilities, Equipment and Other Materials provided by City or state “Not Applicable”
- ___ 15. Exhibit C: Insert Schedule of Services
- ___ 16. Exhibit D: Insert Terms of Payment

***Include headers and footers on all pages.**

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between the CITY OF DAVIS, a municipal corporation existing under the laws of the State of California, hereinafter referred to as “City,” and _____, a _____, hereinafter referred to as “Consultant.”

RECITALS

WHEREAS, Consultant desires to perform and assume responsibility for the provision of certain services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing [INSERT TYPE OF SERVICES] services to public clients and is familiar with the plans of the City with respect to the Project, as defined below.

WHEREAS, the City desires to engage Consultant to render such services in connection with the [INSERT NAME OF PROJECT] project (“Project”) as set forth in this Agreement.

NOW, THEREFORE, City and Consultant agree as follows:

1. SCOPE OF SERVICES AND TERM.

1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, services, and incidental and customary work necessary to fully and adequately perform the [INSERT TYPE OF SERVICES] services necessary for the Project (“Services”). The Services are more particularly described in **Exhibit A**. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. In the event of a conflict between a provision in this Agreement and a provision in **Exhibit A** or in any other exhibit to this Agreement, the provision in this Agreement shall control.

1.2 Facilities, Equipment, and Other Materials. Except as specifically provided in **Exhibit B**, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other materials necessary for performing the Services pursuant to this Agreement. The City

shall furnish to Consultant only those facilities, tools, equipment, and other materials specifically listed in **Exhibit B**, according to the terms and conditions set forth in that exhibit.

1.3 Schedule of Services. Consultant shall perform the Services expeditiously and in accordance with the Schedule of Services set forth in **Exhibit C** and any updates to the Schedule of Services approved by the City. Time is of the essence in the performance of this Agreement. Consultant's failure to perform any Service required under this Agreement within the time limits set forth in **Exhibit C** shall constitute a material breach of this Agreement.

1.4 Term. The term of this Agreement shall begin on the date the City Council approves this Agreement and shall expire upon completion of the Services or when terminated as provided in Article 5.

2. PROJECT COORDINATION.

2.1 City's Representative. The City hereby designates the City Manager to act as its representative for the performance of this Agreement. The City Manager shall have the power to act on behalf of the City for all purposes under this Agreement. The City Manager hereby designates **[INSERT NAME]** as the "Project Manager," who shall supervise the progress and day-to-day performance of this Agreement.

2.2 Consultant's Representative. Consultant hereby designates **[INSERT NAME OR TITLE]** to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services to be performed under this Agreement. Should the Consultant's Representative need to be substituted for any reason, the proposed new Consultant's Representative shall be subject to the prior written acceptance and approval of the Project Manager. The Consultant shall not assign any representative to whom the City has a reasonable objection.

2.3 Coordination of Services. Consultant agrees to work closely with City staff in the performance of the Services and shall be available to City staff at all reasonable times.

3. RESPONSIBILITIES OF CONSULTANT.

3.1 Independent Contractor. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of the City; such personnel shall at all times be under Consultant's exclusive direction and control. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2 Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of 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, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3 Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager's review and approval. Consultant shall furnish City with every reasonable opportunity to determine that Consultant's services are being performed in accordance with this Agreement. The City's review of Consultant's services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

3.4 Substitution of Key Personnel. Consultant has represented to the City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon the City's written approval. In the event that the City and Consultant

cannot agree as to the substitution of key personnel, the City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: [INSERT NAMES OF KEY PERSONNEL OR IF NO KEY PERSONNEL INVOLVED, DELETE THIS PROVISION AND INSERT “INTENTIONALLY OMITTED” FOR SECTION 3.4].

3.5 Licenses and Permits. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City of Davis Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement, at Consultant’s sole cost and expense.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement and in accordance with

the language of Section 6.3, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code 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 agrees to comply with such provisions before commencing the performance of the Services.

3.9 Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person's race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth.

3.10 Insurance.

3.10.1 Time for Compliance. Consultant shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of this Agreement. Such insurance shall meet at least the following minimum levels of coverage:

3.10.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto);

and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

3.10.2.2 Minimum Limits of Insurance. Consultant shall maintain limits no less than: (a) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (b) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.10.3 Professional Liability. Consultant shall procure and maintain, and require its subconsultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability. [ASK RISK MANAGER WHETHER THIS "PROFESSIONAL LIABILITY" PROVISION IS APPLICABLE TO THIS SPECIFIC CONSULTANT. IF NOT APPLICABLE, DELETE THIS PARAGRAPH AND INSERT "INTENTIONALLY OMITTED" FOR SECTION 3.10.3]

3.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.10.4.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage.

Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Consultant or for which Consultant is responsible; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

3.10.4.4 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (a) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City; and (b) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers.

3.10.5 Separation of Insureds; No Special Limitations. All insurance required herein shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the

option of the City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (b) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.10.8 Verification of Coverage. Consultant shall furnish the City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.10.9 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (a) adequate life protection and life saving equipment and procedures; (b) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (c) adequate facilities for the proper inspection and maintenance of all safety measures.

3.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement.

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

4. FEES AND PAYMENT.

4.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates set forth in **Exhibit D**. The total compensation shall not exceed [INSERT WRITTEN DOLLAR AMOUNT] (\$[INSERT NUMERICAL DOLLAR AMOUNT]) without written approval of the City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2 Payment of Compensation. Consultant shall submit to the City a monthly itemized statement which indicates tasks completed during the month, hours of services rendered by Consultant during the month, and supplies provided during the month. The City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

4.3 City's Right to Withhold Payment. The City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services past the milestones established in the Schedule of Services (**Exhibit C**), or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement on account of payment disputes with the City, provided that the City continues to make payment of undisputed amounts.

4.4 Payment Disputes. If the City disagrees with any portion of a billing, the City shall promptly notify Consultant of the disagreement, and the City and Consultant shall attempt to

resolve the disagreement. The City's payment of any amounts shall not constitute a waiver of any disagreement and the City shall promptly pay all amounts not in dispute.

4.5 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses except as specifically set forth in **Exhibit D**.

4.6 Extra Work. At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City Manager.

4.7 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. 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 such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services, and shall post copies at the Consultant's principal place of business and at the Project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

4.8 Living Wage Ordinance.

4.8.1 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.

4.8.2 Prior to commencement of any work under this Agreement, Consultant and all subconsultants that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the City that Consultant and subconsultants 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.

4.8.3 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.

4.8.4 Consultant shall include the requirements of Chapter 15.20 in any and all agreements with subconsultants hired to provide services pursuant to this Agreement. Any and all subconsultants retained by Consultant to provide services pursuant to this Agreement that employ six or more employees and receive \$25,000 or more for 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 subconsultant 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.

5. SUSPENSION AND TERMINATION.

5.1 Suspension. The City may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable

conditions or to the failure on the part of Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

5.2 Termination for Cause.

5.2.1 If Consultant at any time refuses or neglects to prosecute its services in a timely fashion or in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without the City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within seven (7) days after written notice thereof, the City may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared or used by Consultant in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

5.2.3 In the event the City elects to terminate, the City shall have the right to immediate possession of all documents and data and work in progress prepared by Consultant, whether located at the Project, at Consultant's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses incurred by the City in obtaining the Services necessary to complete the Project exceed such unpaid balance, then Consultant shall promptly pay to the City the amount by which such expense exceeds the unpaid balance of the not-to-exceed amount reflected in

Section 4.1. The expense referred to in the previous sentence shall include expenses incurred by the City in causing the Services called for under this Agreement to be provided by others, for attorneys' fees, and for any costs or damages sustained by the City by reason of Consultant's default or defective work.

5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, the City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by the City, plus (2) payment for Additional Work satisfactorily completed and accepted by the City, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against the City or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2 If this Agreement is terminated by the City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

6. OTHER PROVISIONS.

6.1 Documents and Data.

6.1.1 Ownership of Documents. The City shall be the owner of the following items produced pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of

the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of the City.

6.1.2 Copyright. No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of the City. The City shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

6.1.3 Release of Documents to City. Consultant shall deliver to the City all materials prepared by Consultant in connection with this Agreement, including all drafts, memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from the City.

6.1.4 Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with its performance under this Agreement are confidential until released by the City to the public, and Consultant shall not make any of these documents or information available to any individual or organization not employed by Consultant or the City without the written consent of the City before any such release.

6.2 Assignment; Successors. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the City. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

6.3 Indemnification.

6.3.1 Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability,

loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above defense and indemnity obligations shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

6.3.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of the City's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 6.3.1 that may be brought or instituted against the City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse the City for the cost of any settlement paid by the City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse the City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

6.3.3 Survival of Obligation. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

6.4 Consultant Not Agent. Except as the City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever.

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

6.6 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: _____

Attn: _____

City: City of Davis

Davis, CA 9561_
Attn: _____

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

6.7 Incorporation by Reference. All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

6.8 City's Right to Employ Other Consultants. The City reserves the right to employ other consultants in connection with this Project.

6.9 Construction; References; Captions. The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

6.10 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

6.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel or otherwise.

6.12 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties.

6.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

6.14 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.

6.15 Interest of Subconsultants. Consultant further covenants that, in the performance of this Agreement, no subconsultant 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 subconsultants and the key personnel for such subconsultants 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.

6.16 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 subconsultants 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, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.17 Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

6.18 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

6.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

6.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

6.21 Entirety of Agreement. This Agreement contains the entire agreement of the City and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

[Signatures on following page]

SAMPLE

SIGNATURE PAGE TO CONSULTANT SERVICES AGREEMENT

IN WITNESS WHEREOF, the City and Consultant have entered into this Agreement as of the date first stated above.

CITY OF DAVIS

CONSULTANT

By: _____

By: _____

Its: _____

Its: _____

Approved as to form:

Harriet A. Steiner
City Attorney

EXHIBIT A

SCOPE OF SERVICES

[Describe services to be performed by Consultant.]

**DO NOT SIMPLY ATTACH PROPOSAL. DO NOT INCLUDE ADDITIONAL TERMS
AND CONDITIONS PROVIDED BY CONSULTANT]**

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY CITY

[Insert description of only those facilities, equipment and other materials provided by CITY—all materials not listed will be provided by Consultant. If City will not provide any facilities, equipment or other materials, insert “NOT APPLICABLE”]

EXHIBIT C

SCHEDULE OF SERVICES

**[Insert Schedule and/or deadlines for Consultant to provide deliverables described in Scope
of Services]**

EXHIBIT D

PAYMENT

[Insert payment amounts, including billing rates if contract is let on time and materials basis; Include reimbursable expenses, if any, that may be charged to the City under the Agreement]

EXHIBIT E

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.

Paper Category	Minimum Percentage of "Recovered Material"	Minimum Percentage of "Postconsumer Material"
High-speed Xerographic	50	10
Bond Paper	50	10
Cover Stock	50	10
Envelopes	50	10