City of Davis

Request for Proposals

Comprehensive Wastewater (Sewer) Rate Study

Date Released: February 3, 2020
Date and Time Due: February 28, 2020 at 4:00 p.m.

Contact Person:

Jennifer Cariglio
Management Analyst
Public Works Department
1717 Fifth Street
Davis, CA 95616
JCariglio@cityofdavis.org
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REQUEST FOR PROPOSALS – WASTEWATER (SEWER) RATE STUDY

INTRODUCTION

Overview and Background

The City of Davis (City) is requesting proposals from qualified firms to perform a comprehensive wastewater (sewer) rate study. The purpose of this study is to prepare a cost of service study, validate the appropriate rate structure, and recommend rates for the City that generate adequate revenue to cover:

- Current and future operations and maintenance costs based on established and anticipated regulations and industry best management practices;
- Rate stabilization;
- Capital repair and replacement costs based on age and condition of infrastructure and systems;
- Major Capital Improvement project costs;
- An adequate reserve fund;
- Required debt coverage; and
- Necessary studies to maintain an efficient and resilient utility.

The Study will analyze a 20-year period, with a five-year Proposition 218 rate adjustment schedule implementation.

Purpose of Project

The City of Davis owns and operates a Wastewater Treatment Plant, currently discharging pursuant to Order No. R5-2018-0086 under NPDES Permit No, CA0079049 with a discharge limit of 7.5 million gallons per day (MGD). The existing treatment system design capacity is 6.0 MGD based on average dry weather flow and consists of the following discharge points:

- For Discharge Point 001 – the treatment train consists of screening, aerated grit removal, primary sedimentation, activated sludge, secondary clarifiers, tertiary treatment process (filtration), chlorination and dechlorination.
- For Discharge Point 002 – the treatment consists of the same treatment as Discharge 001 in addition to a series of constructed wetland pond tracts. All the wetland tracts have recirculation capability.
- Biosolids are anaerobically digested, dewatered on-site by screw press and dry biosolids are stored and disposed off-site.

The City of Davis (City) wastewater collection system serves a population of approximately 66,630 people in an area encompassing roughly 10.5 square miles. The system serves 15,665 residential connections, and 540 commercial, industrial and institutional customers (as of 2019). The wastewater system consists of 164 miles of gravity sewers (approximately 3,300 line segments) ranging in size from 6 to 66 inches in diameter, 3,224 manholes, 6 pump stations, 2.63 miles of force mains ranging in size from 4 to 14 inches, and roughly 88 miles of sewer laterals.
The City’s wastewater utility is operated as a self-supporting enterprise fund. Revenues are derived primarily from sewer service charges and must be adequate to fund the water system’s operating and capital programs. Wastewater customers are charged a fixed monthly rate, a fixed per unit rate and a volumetric rate based on winter water average use. Annual sewer rate charges are calculated and updated each year in May. The wastewater rates were last adjusted in October of 2017; however, this adjustment was for cost allocation adjustments only; the last approved increase in rates occurred on December 1, 2015.

It is intended that this study will be to establish the current minimum rate revenue needed to ensure the ongoing fiscal requirements of the utility, and offer validations or recommendations for the city’s rate and revenue collection methodology. Since the last full cost of service study conducted by the City in 2017, the multi-year Wastewater Treatment Plant upgrade has been completed.

**Term of Contract**

The contract will be for a period of one year from the date the standard agreement is signed.

**Additional Documents Included for Reference (Included as hyperlinks):**
- Comprehensive Sewer Rate Study Report - January 2017
- Sewer Rate Study Appendix B

**STUDY DESCRIPTION**

**This study, as a minimum, will consist of:**

1. Preparation of a cost of service analysis, including revenue requirements.
2. Development and analysis of appropriate rate structures (up to 4 alternatives).
3. Assessment of different approaches to implementing a revenue collection methodology, identify specific requirements to implement the recommended collection methodology and the relative pros and cons of each approach (if applicable). This will also include an estimate of potential cost impacts associated with different approaches to revenue collection methodology.
4. Determination of the rates necessary to meet the City’s revenue requirements, with a rate stability program for consideration of changes in water consumption based on weather or regulatory updates.
5. Recommendation of annual operating fund balance targets and reserve levels for operating, capital replacement and upgrades, financing, cash flow and unforeseen events.
6. Development of a Rate Model (based on City-provided template) that can be used by the City in future rate setting.
7. Participation in presentations and meetings.
The analysis period shall be twenty years. At the conclusion of the Study, the City anticipates proceeding with a Proposition 218 notice to the community to adopt the recommended rates and/or rate collection methodology.

The City will provide a 20-year Capital Improvement Plan (projects, timing and costs) for future years.

Your proposal may recommend additional components that would benefit the City. If additional components are recommended, please provide a detailed description of the value to the City.

**SCOPE OF SERVICES**

A proposed minimum Scope of Services is listed below:

- **Kick-off Meeting.**
  Meet with City staff to identify information needed for review and to layout schedule. Provide follow-up written minutes.

- **Data Collection.**
  Provide a comprehensive list of data requirements for City staff to provide that will support the study.

- **Revenue Requirement Analysis.**
  Perform a revenue requirement analysis utilizing a generally accepted approach for a 20 year projected time period. Revenue requirements include Operations and Maintenance, basic repair and replacement needs, capital improvement projects, and reserve funds. Revenue requirements should also include an analysis of future water consumption scenarios based on weather patterns and state regulations, to assess the rate impacts of water consumption changes, regulatory changes, or other unforeseen events.

- **Progress Meetings.**
  Conduct bi-weekly project meetings to review progress with City staff and coordinate continuing project activities. Take and distribute minutes for meetings.

- **Cost of Service Analysis.**
  Perform a cost of service analysis to equitably allocate the previously developed revenue requirement to the various customer classes as determined by each revenue collecting methodology. This task should include benchmark comparisons to agencies with similar populations and utility structures.

- **Rate Design Analysis.**
  Design a rate model including:
  1. All necessary revenues.
  2. Debt service options & costs.
  3. Up to four (4) recommended rate structure options with an evaluation of advantages and disadvantages of each.
  4. Capital project financing scenarios (including schedules)

- **Advisory Commission Presentations.**
  Present at up to four evening meetings to update the City’s Utilities Commission, two of those meetings focused on review of the document for feedback.
• **Draft Report.**  
Submit an electronic draft report for review by staff and the Utilities Commission. Report shall be comprehensive in nature and document all of the activities undertaken as a part of the project, along with all findings, conclusions and recommendations, including a recommended rate structure. Allow a four-week review period.

• **Review Meeting.**  
Participate in a review meeting with staff to address the review comments.

• **Final Report.**  
Submit the final report to City within three weeks of receiving the comments.

• **City Council Presentation.**  
Conduct one presentation of final findings to City Council.

• **Proposition 218 Assistance**  
Assist City staff with the Proposition 218 process.

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.

**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 under the Proposal Requirements are included.

The contents of the proposal must be limited to ten (10) double-sided pages (equivalent to 20 single-sided pages), not including fee estimate, resumes, certifications, Gantt chart, evidence of insurance and Acceptability of Terms and Conditions for the City Standard agreement, which can be provided electronically, except for the fee estimate, which must be included in a separate sealed envelope. The proposal shall use a minimum 12-point font size.

The proposal shall contain the following sections:

<table>
<thead>
<tr>
<th>Section</th>
<th>Contents</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cover letter</td>
<td>Transmittal identification and declaration of conflict(s) of interest</td>
<td>1 sheet maximum</td>
</tr>
<tr>
<td>1</td>
<td>Project Team Description and Qualifications</td>
<td>3 sheets maximum (not including resumes and certifications)</td>
</tr>
<tr>
<td>2</td>
<td>Scope of Services</td>
<td>3 sheets maximum (not including Gantt Chart of timeline)</td>
</tr>
<tr>
<td>3</td>
<td>Subcontractors (if applicable)</td>
<td>1 sheet maximum</td>
</tr>
<tr>
<td>4</td>
<td>Client References</td>
<td>2 sheets maximum</td>
</tr>
</tbody>
</table>
The City will not pay for any costs incurred in preparation and submission of the proposals, or in anticipation of a contract.

**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 Letter of Interest must also include the following information:

- The consultant name, the corporate office and local address, including city, State, zip code, and phone number, in addition to the proposal contact person’s address, phone number, and e-mail 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.

**Proposal Content**

1. **Project Team Description and Qualifications**
   The team members should be experienced with: sewer and water rate studies, rate modeling, urban sewer demands, familiarity with sewer rates in other communities in California, sewer rate structure and design analysis, capital project and financial planning, collaborative experience with advisory committees and community involvement processes, Prop. 218 Notice requirements, and outreach approaches and materials that enhance customer understanding of rate policy choices.

   Provide an organization chart, and for each key team member, provide the following:
   - Qualifications and their experience on similar studies
   - Role and responsibilities for this study
   - Home office location
   - Estimate of time allocation to the study (averaged over the duration of the project).

2. **Scope of Services**
   Briefly respond to each item listed in the Scope of Services, indicating how the consultant will address each of the City’s specifications listed, and include a schedule (Gantt Chart, 11x17 paper is allowed) to complete the Scope of Work.
This section shall present the proposed Study process and the consultant's specific tasks for performing the work. This section should convey the consultant's understanding of the Study, and demonstrate specialty experience, management, and other features that lead to successful achievement of Study goals.

3. **Subcontractors**
   As part of the proposal, the consultant shall identify any and all subcontractors that will be used in their proposal and provide names, qualifications, experience, location, and role of each sub-consultant.

4. **Client References**
   Provide contact information, and a brief overview of studies performed for clients that demonstrate proposer’s qualifications and experience for performing the requested services. Provide names, addresses, phone numbers, and email addresses for at least three previous clients who have received similar services from the team/firm (no more than five).

   Reference projects should:
   • Demonstrate the firm’s understanding of the components required to develop cost of service and rates.
   • Demonstrate the firm’s past experience with evaluating many rate structure options (and what type they were) for a client and then selecting one that is being, or has been, implemented.
   • Demonstrate the firm’s capability to communicate effectively, solve problems, and resolve conflicts as necessary to affect a beneficial team oriented review and study.
   • Specifically include information that demonstrates the firm’s experience in working with community advisory committees and/or commissions.
   • For referenced studies, include description of any additional services provided in support of developing rates.

5. **Fee Estimate and Rate Schedule**
   Compensation will be on a time and expense basis, with a not-to-exceed total cost limit. Allowable markups will be 10% on subconsultants and other direct costs.

   In a separate envelope provide:
   • Estimated fee by task (tasks should match scope of work section)
   • Hourly billing rate schedule for all proposed staff
   • Types and estimated amount of expenses to be billed to the project
   • Fees by subconsultant, by task

   Only electronic copy is required. If paper copy submitted, no sheet limit. May be on 11x17 paper.
6. **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.

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability (CGL)</td>
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<tr>
<td>Automobile Liability</td>
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<tr>
<td>Workers’ Compensation</td>
<td></td>
<td></td>
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<tr>
<td><strong>If applicable</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professional Liability (Errors and Omissions)</td>
<td></td>
<td></td>
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<tr>
<td>Other Insurance Provisions</td>
<td></td>
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</tbody>
</table>

7. **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.

**SUBMITTAL REQUIREMENTS**

Please mail or drop-off THREE (3) bound copies, and ONE (1) USB drive of *an unlocked* PDF copy of your proposal at your earliest convenience, but no later than February 28, 2020 at 4:00pm to:

Jennifer Cariglio  
c/o City Clerk’s Office  
City of Davis  
23 Russell Blvd., Suite 1  
Davis, CA 95616  
Attn: Comprehensive Wastewater (Sewer) Rate Study

Please note, the City will not accept incomplete proposals, proposals postmarked after the submittal due date and time, or proposals submitted via email or facsimile, unless otherwise noted.

**EVALUATION CRITERIA AND SCORING**

A selection committee comprised of City staff and/or outside panelists will review and rate each of the proposals. The selection may be based solely on the review of criteria listed below but could also include an interview with the top ranking firms if necessary.
The proposals will be evaluated and ranked based on the following criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points Possible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experience, education, and/or credentials of proposer’s staff</td>
<td>30</td>
</tr>
<tr>
<td>Response to Scope of Services</td>
<td>50</td>
</tr>
<tr>
<td>Successful Approval of a Proposition 218 Rate Structure by Authorizing Body</td>
<td>10</td>
</tr>
<tr>
<td>Proposer’s adherence to the RFP requirements</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total Points</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

After review of the proposals, the successful firm will be notified via email and after negotiation of final scope and signature of agreement will receive the notice to proceed.

**SELECTION PROCESS AND ESTIMATED SCHEDULE**

Proposals will be reviewed to determine if the applicant demonstrates the minimum qualifications necessary to complete the Scope of Services required for the Project, as outlined in the Proposal Requirements. 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. The negotiations will include participation from the City’s Utilities Commission. Interviews may be conducted if needed.

**PROPOSAL SCHEDULE**

The tentative schedule is as follows:

<table>
<thead>
<tr>
<th>Anticipated Dates</th>
<th>Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 3, 2020</td>
<td>RFP released to the public</td>
</tr>
<tr>
<td>February 13, 2020</td>
<td>Deadline for questions and clarification inquiries sent via email to <a href="mailto:JCariglio@cityofdavis.org">JCariglio@cityofdavis.org</a></td>
</tr>
<tr>
<td>February 18, 2020</td>
<td>Responses to questions via addendum if substantive (if applicable)</td>
</tr>
<tr>
<td>February 28, 2020</td>
<td>Proposal submission deadline (emails and facsimiles not accepted)</td>
</tr>
<tr>
<td>Date Range</td>
<td>Task Description</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>March 2 - 13, 2020</td>
<td>Evaluate proposals and reference checks</td>
</tr>
<tr>
<td>March 16 - 20, 2020</td>
<td>Select successful firm</td>
</tr>
<tr>
<td>March 24, 2020</td>
<td>City Council meeting to approve consultant selection</td>
</tr>
<tr>
<td>April 2020 - August 2020</td>
<td>Rate Study analysis</td>
</tr>
<tr>
<td>September/October 2020</td>
<td>Draft Report (including presentations to Utilities Commission)</td>
</tr>
<tr>
<td>October/November 2020</td>
<td>Final Report submitted to the City, Presentation to City Council</td>
</tr>
<tr>
<td>December/January 2020</td>
<td>Proposition 218 Process Initiated (includes 45 day comment period)</td>
</tr>
<tr>
<td>May 2021</td>
<td>Rate Adjustments (if applicable) Implemented</td>
</tr>
</tbody>
</table>

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.

**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:

- Bartle Wells Associates
- HF&H Consultants
- NBS
- Raftelis
- SCI Consulting Group
- Stantec

**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.

**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 include 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 ninety (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.

QUESTIONS
Questions about this RFP should be made in writing via email to Jennifer Cariglio at JCariglio@cityofdavis.org. All requests for information or questions must be submitted by 4:00 p.m. February 13, 2020. Questions submitted after the due date or via phone will not be accepted. All substantive questions and answers will be published via addendum.
APPENDIX A: CITY STANDARD PROFESSIONAL SERVICES 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.


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.


a. 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.

b. 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 law, 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:

Combined Single Limit

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)

[***INSERT OTHER LIABILITY***] $_____________

(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.


(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.


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.


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
Davis, CA 95616
Attn: [***INSERT NAME & DEPARTMENT***]

CONSULTANT:
[***INSERT NAME, ADDRESS & CONTACT PERSON***]
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: __________________________ By: __________________________
   Mike Webb                   Its: __________________________
   City Manager                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