REQUEST FOR PROPOSAL

TO: ALL INTERESTED PARTIES
FROM: Yvonne Quiring, Assistant City Manager/Director of Administrative Services
SUBJECT: INDIRECT COST ALLOCATION PLAN & MASTER FEE SCHEDULE SERVICES
DATE: July 18th, 2013

The City of Davis is requesting proposals from qualified firms for the development of a Cost Allocation Plan, a central service cost allocation in accordance with Federal Office Management and Budget Circular A-87 (OMB A-87), update the Master Fee Schedule, and identify additional service fees charged by surrounding cities that are not part of the existing Master Fee Schedule for the City. The City will not be seeking an analysis of its Community Services (Recreation) fees.

Interested parties should submit four (4) bound copies and one (1) unbound copy of their proposal and bids by 4:00 p.m. on Monday, August 19th, 2013 to:

City of Davis,
Finance Division
23 Russell Blvd.
Davis, CA 95616
Attn: Yvonne Quiring

If proposers need additional information on any aspect of this Request of Proposal, they should contact City of Davis, Evelyne Hayden at (530) 757-5632 / Ehayden@cityofdavis.org, or Dominique Sayer, Administrative Aide at (530) 757-5824 / Dsayer@cityofdavis.org.

Attachments: RFP
City of Davis

REQUEST FOR PROPOSALS

COST ALLOCATION PLAN AND MASTER FEE SCHEDULE SERVICES

Date Issued
July 18, 2013

Proposal Submittal Due Date
Monday, August 19, 2013
by 4:00 p.m.

To
Yvonne Quiring
Assistant City Manager/Director of Administrative Services
City of Davis
Finance Department
23 Russell Blvd
Davis, CA 95616
Phone (530) 757-5607
REQUEST FOR PROPOSAL  
(RFP)  
COST ALLOCATION PLAN AND MASTER FEE SCHEDULE SERVICES

The City of Davis will accept sealed proposals for Cost Allocation Plan and Master Fee Schedule services, which must be prepared in accordance with the Request For Proposals, Provisions and Specifications, at the City Finance Office located at 23 Russell Blvd, Davis, CA 95616 until 4:00 p.m. on Monday, August 19, 2013. Facsimile (FAX) submittals will not be accepted nor will any proposal which arrives after 4:00 p.m. on August 19, 2013.

INTRODUCTION

The City of Davis is requesting proposals from qualified firms for the development of a Cost Allocation Plan, a central service cost allocation in accordance with Federal Office Management and Budget Circular A-87 (OMB A-87), update the Master Fee Schedule, and identify additional service fees charged by surrounding cities that are not part of the existing Master Fee Schedule for the City. The City will not be seeking an analysis of its Community Services (Recreation) fees.

The objective of the Cost Allocation Plan is to ensure that the City of Davis is accurately accounting for the true cost, both direct and indirect, of providing various services within the City operations. The central service cost allocation will be used for grant applications and grant reimbursement claims.

The objectives of the Master Fee Schedule are (1) to have a comprehensive city-wide user fee schedule that includes the full cost (100%) for providing certain City services and (2) to identify any potential new fees for existing services rendered.

Results and recommendations of the Project must comply in all respects with requirements of the California Constitution, Proposition 218, Proposition 26, and Federal OMB A-87, and ASMB C-10 reporting guidelines.

BACKGROUND AND GENERAL INFORMATION

Overview of Organization – The City of Davis was incorporated in 1868 and is located in Yolo County with an estimated population of 66,000. The City currently occupies a land area of 10.5 square miles. The City operates under the Council-Manager form of government with a five-member Council. The City Manager serves as the administrative head of city government overseeing the departments of Fire, Police, Administrative Services (which includes Community Services/Recreation), Community Development, and Public Works (which includes Parks).
The City of Davis’ all funds expenditure budget for Fiscal Year 2013/14 is over $245 million. The City provides a broad range of services, including police and fire protection; water services; sewer; construction and maintenance of streets, roads and infrastructure; planning and zoning; parks and recreation; and, general administrative and support services.

The Cost Allocation Plan and Master Fee Schedule that the City is currently using was developed through the collaboration of City staff and an outside consultant. Ideally, the City is looking for a Cost Allocation Plan and Master Fee Schedule which will be updated annually with minimal City staff resources required for the update. Work should be coordinated so that new Cost Allocation Plan and Master Fee Schedule information is available when the budget process begins in January 2014. The following interests have been expressed in the development of this RFP:

- Meets all legal requirements
- Minimizes the amount of staff resources [both Finance and departmental] to update and maintain
- Minimizes variability from year to year
- Creates understanding of cost recovery of various services

**SCOPE OF WORK**

The City desires to contract with a single firm to provide the services described herein. Proposals should fully address the below scope of work, and include a description of all deliverables and activities.

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant’s proposal.

**Cost Allocation Plan**

1. Work with selected City staff to define the purpose, uses, and goals for a Cost Allocation Plan and a central service cost allocation in accordance with OMB A-87, ensuring that the development of the plans will be both accurate and appropriate for the City’s current needs.

2. Develop both a Cost Allocation Plan Model in Microsoft Excel for calculating the full costs of providing each City service and an OMB Circular A-87 applicable plan for use with Federal Grants and Programs. The requirements of the Model shall allow for:
   a. The addition or removal of direct and overhead costs so that the cost allocation plan can be developed from a simple plan to a progressively more inclusive plan.
   b. The ability to continuously update the Model from year-to-year as the organizational structure changes and the costs change.
c. Provide justification to support internal and external rates and/or percentages charged by departments for cost recovery, including Capital Projects.

3. Work with the City in developing service provisions, cost categories, and allocation criteria for current and future programs.

4. Provide on-site training to enable staff to update the Plan on an annual basis, as well as written procedures for updating the plan.

5. Provide four bound and one unbound copy of the Cost Allocation Plan, and one electronic version in Microsoft Excel to the City.

6. Prepare final plans and participate in the presentation to the City Manager, City Council, and City staff. Collect and document comments and concerns, and make necessary adjustments as requested.

**Master Fee Schedule**

1. Update the existing Master Fee Schedule to reflect the current cost of providing services and meet the requirements embodied in Proposition 26. Community Services (Recreation) Fees will not be included in the analysis.

2. Prepare an Excel-based analysis that identifies each City service, its full cost, the cost currently being recovered, and the recommended cost-recovery levels. For each activity, the analysis should take into consideration both direct and indirect costs. Please include two (2) non-city stakeholder meetings in the proposal.

3. Prepare an Excel-based survey that compares the City’s existing fees and service charges to similar cities selected by the City with Consultant’s input.

4. Recommend potential new fees and charges for services that the City currently provides but does not have any fees and/or charges established. Recommendations should be based on practices by surrounding cities that may charge for similar services, industry best practices, or the consultant’s professional opinion.

5. Present initial results and recommendations to the City staff and adjust as necessary.

6. Provide four bound and one unbound copy of the Master Fee Schedule report.

7. Deliver a Microsoft Excel-based model for adjusting these fees and charges for the City’s current and future needs, and provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization and changes in cost.
8. Provide on-site training to enable staff to update fees on an annual basis, as well as written procedures for updating the plan.

9. Present the proposed updated Master Fee Schedule to the City Council based on study results. The results of performing comparative fees from surrounding cities should be part of the same City Council briefing. **Please include two (2) Council meetings in the proposal.**

Report on other matters that come to your attention in the course of your evaluation that in your professional opinion the City should consider.

**PROPOSAL PROCESS**

Consultant will submit four (4) bound copies and one (1) unbound copy of the proposal. The services provided, qualifications, experience, and reference portions of the proposals will be weighted more heavily than the costs. If the proposal contains proprietary data or trade secrets, please clearly identify them as such.

**Cover Letter:** The cover letter shall be signed by an official authorized to bind the firm and shall contain a statement that the proposal is valid for ninety (90) days. As well, the cover letter shall serve as the introductory letter and should provide the name, address, phone number, fax number, and email address of the firm's contact person for the Request for Proposal. It should include a description of the firm, including the size (number of employees), the number of years in business and areas of specialization.

**Work Plan and Project Schedule:** Proposals must contain an outline of a proposed work plan including a description of deliverables and activities that will be undertaken. Consultants should describe their approach for managing the project and project schedule.

Consultant should describe their technical approach to the work, and should list specific tasks necessary to fulfill the project requirements. Proposers are encouraged to identify any supplemental tasks necessary or recommend any alternatives that may enhance the project or reduces the costs.

Provide a schedule that includes resource (both City employees and vendor employees) requirements, a step-by-step work plan of all activities involved in the conduct of the work, and timelines for those steps. The work plan will be incorporated in Exhibit C of the City contract.

**Consultant Qualifications & Experience:** Proposals must contain a statement as to qualifications of the proposing firm, and identify the project manager, staff, and subcontractors that would have assignments under this contract, and provide their resumes that fully describe their qualifications, experiences, and projects for which they had “hands on” responsibility. Also include length of time with the firm. The project manager will be expected to be fully involved and conversant in the details of
the project on a day-to-day basis. Describe the organization structure of staff members and sub-consultants (if any).

This section should also include a description of recent projects of a similar nature including client references with names and telephone numbers. These projects should include computer model deliverables. Include a description of the firm’s experience in providing knowledge transfer of plan/study components and rate models to city/agency staff.

Firms must be registered to do business in the State of California before a contract will be awarded. In addition, Consultant must obtain a City of Davis business license which remains effective for the term of contract.

References: Provide the names, phone number, contact person and mailing address of at least five (5) references for which similar services have been provided in the last three (3) years. Indicate the capacity of services provided for each of these references.

City of Davis Contract: The successful firm will be asked to sign a City of Davis contract provided in "Exhibit 1." Proposals should include a statement indicating the firm’s willingness and ability to sign this contract "as is", including the proposed insurance requirements, or detailing the reasons why they are not willing or able to do so.

Legal Issues/Conflicts of interest: Proposals must also identify whether the firm has:

- Violations of federal, state or local regulations and laws within the past three years;
- Pending or current litigation;
- Arrangements with other firms that could pose a conflict of interest; and,
- If none of the above applies, a statement to that effect.

Costs: Proposals should include the following:

- An hourly rate schedule and all costs associated with providing the services described in the Scope of Work.
- Project costs should be itemized according to individual tasks.
- A requested payment schedule should accompany the work schedule. Each phase of work should have an itemized cost including labor costs and expenses for each piece of work.
- The consultant shall present a specific “not-to-exceed” fixed fee which includes associated fees (i.e. printing costs, attendance at meetings, travel).
- In the event that the City chooses to have the consultant prepare the annual update of the Cost Allocation Plan, provide the annual cost over the next five years.
Based on the proposals received, the City may choose to award the contract for the Cost Allocation Plan and the central cost allocation based on OMB A-87, and later prepare a separate RFP for the Master Fee Schedule component. Please submit “not-to-exceed” fixed fees, both with and without the Master Fee Schedule component.

EVALUATION OF PROPOSALS AND NEGOTIATIONS

An evaluation panel will review all proposals submitted and select the top proposals. These top firms may then be invited to make a presentation at no cost to the City to the evaluation panel in City Offices in Davis, California. There will be no public opening and reading of bids. Overall responsiveness to the Request for Proposals is an important factor in the evaluation process.

Proposals will be evaluated on the basis of the:

- Firm’s overall qualifications and experience, especially in the public sector, as applied to the Scope of Work, including staff expertise and overall experience of staff that would be assigned to the City’s project.

- Responsiveness to the Request for Proposal process and general provisions, and understanding of the scope of work as evidenced by the services offered in the proposals, project timelines, presentations, and ability and willingness to sign a City contract.

- References, including satisfaction with previous Cost Allocation Plans and Master Fee updates.

- Cost. Price will be an important, but not determining, factor.

ESTIMATED SCHEDULE

<table>
<thead>
<tr>
<th>Task</th>
<th>Date</th>
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<tbody>
<tr>
<td>RFP Issued</td>
<td>Thursday, July 18, 2013</td>
</tr>
<tr>
<td>Proposal Due Date</td>
<td>Monday, August 19, 2013</td>
</tr>
<tr>
<td>Oral Interviews at City Discretion</td>
<td>Week of September 9-12</td>
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<tr>
<td>Selected Firm Notified</td>
<td>Tuesday, September 24, 2013</td>
</tr>
<tr>
<td>Begin Project</td>
<td>Monday, October 7, 2013</td>
</tr>
<tr>
<td>Project Complete</td>
<td>Monday, January 13, 2014</td>
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GENERAL PROVISIONS

Proposals: Firms are required to submit a proposal on all bid items. Proposal submittals which do not have all items bid will not be considered.

This Request for Proposals shall result in a firm, fixed-price contract. Unless prices and all information requested are complete, the proposal may be disregarded and given no consideration.

In case of default by the firm, the City may procure the articles or services from other sources and may deduct from any money due, or that may thereafter become due to the firm, the difference between the price named in the contract or purchase order and the actual cost thereof to the City.

All prices and proposals must be in ink or typewritten. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the proposal.

All proposals must be signed with the firm’s name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

Submission of Proposals: Each proposal must be in the prescribed form and submitted in a sealed envelope. The outside of the envelope must be clearly marked “Request for Proposal—Cost Allocation Plan and Master Fee Schedule”.

Information must be furnished complete in compliance with the terms, conditions, provisions and specifications of the Request for Proposals. The information requested and the manners of submission are essential to permit prompt evaluation of all proposals on a fair and uniform basis.

Accordingly, the City reserves the right to declare as non-responsive and reject any proposal in which material information requested is not furnished or where indirect or incomplete answers or information is provided.

Proposals and modifications or corrections thereof received after the closing time specified will not be considered.

Proposals shall be for the total net price including all applicable taxes and charges.

No telegraphic, telephone or facsimile of proposals will be accepted.

Proposal Postponement and Addendum: The City of Davis reserves the right to revise or amend the specifications or any other part of the proposal up to the time set for opening. Such revisions and amendments, if any, shall be announced by addendum to this solicitation. Copies of such addendums shall be furnished to all prospective bidders by posting it on the City website. A proposer may make a
request to the City’s project coordinator to be placed on a list of persons to receive notices of any such addenda, changes, or amendments. If a proposer chooses to do this, the preferred manner of communication due to timeliness is via email. If revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening of proposals may be postponed by such number of days as in the opinion of the City shall enable bidders to revise their proposals. In any case, the proposal opening shall be at least five (5) working days after the last addendum; and the addendum shall include an announcement of the new date, if applicable, for the opening of proposals.

**Single Proposal Response:** If only one proposal is received in response to the Request for Proposals, a cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

**Proposal Withdrawal:** After the proposals are opened, proposals may not be withdrawn for ninety (90) calendar days. Prior to the date and time set for the proposal opening, however, proposals may be modified or withdrawn by the bidder’s authorized representative in person.

**Firm Investigation:** Before submitting a proposal, each firm shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the City upon which the vendor will rely. If the firm receives an award as a result of its proposal submission, failure to have made such investigations and examinations will in no way relieve the firm from its obligation to comply in every detail with all provisions and requirements of the contract. A plea of ignorance of such conditions and requirements will not be accepted as a basis for any claim whatsoever by the firm for additional compensation.

**Competency of Firms:** No proposal will be accepted from or contract awarded to a firm: (1) who is not licensed in accordance with the law, (2) who does not hold a license to perform work under this contract to whom a proposal form has not been provided and (3) who has not successfully performed on projects of similar character and scope. Before the award of any contract, the firm may be required to show to the complete satisfaction of the City that it has the necessary facilities, ability, experience, and financial resources to provide the services specified herein in a satisfactory manner. Generally, at a minimum, the firm history and references are required. The City may make reasonable investigations deemed necessary and proper to determine the ability of a firm to perform the work. The firm shall furnish the City all information requested for this purpose.

**Award:** The City reserves the right to (1) reject any and all proposals; (2) waive any informality in the proposals; (3) accept the proposal that appears to be in the best interest of the City; and, (4) change the scope of the Project to exclude the Master Fee Schedule. The City intends to award to a single firm.

In determining and evaluating the best proposal, the price will not necessarily be the controlling factor, but quality, equality, efficiency, utility, general terms, delivery,
suitability of the service offered, and the reputation of the service in general use will also be considered with any other relevant factors.

Notice of contract award, if a contract is awarded, will be made within forty-five (45) days of opening of proposals to the firm, whose proposal complies with all the requirements in the Request for Proposals and is found to be the best value to the City.

Within ten (10) days from notice of contract award, the firm shall submit to the City, for approval all Certificates of Insurance evidencing the required coverage as described under Insurance in the City’s Agreement for Professional Services, commencing on page 16 of this RFP.

The firm shall not commence work under the terms and conditions of the contract until (1) all Certificates of Insurance have been approved by the City and (2) the firm has received an executed copy of the contract from the City of Davis.

**Payments:** Consultant shall submit to the City a monthly itemized statement which indicates tasks completed during the month, hours of service rendered by the 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. The firm shall submit invoices to:

Attn: Kelly Fletcher  
City of Davis  
23 Russell Blvd  
Davis, CA 95616

**Retention of Records:** Consultant shall retain copies of all Documents & Data on file for a minimum of four (4) years following completion of the Project or termination of the Agreement, whichever is earlier, and shall make copies available to the City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following the retention period, Consultant shall make reasonable effort to notify the City and provide the City with the opportunity to obtain the documents.
CITY OF DAVIS, CA

AGREEMENT FOR PROFESSIONAL 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 professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing cost allocation services described with further particularity in the City’s Cost Allocation Plan and Master Fee Services Request for Proposals dated July 18, 2013 to public clients, is licensed in the State of California, 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 Cost Allocation Plan and Master Fee Schedule 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 professional accounting 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 Section 6.

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], or his or her designee, 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].

3.5. **Licenses and Permits.** Consultant represents that it, its employees and sub-consultants 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, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California with experience performing services in connection with public works of improvement similar in size, scope and complexity to the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub-consultants 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 sub-consultants 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 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 7.2, 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 sub-consultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the sub-consultant 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 sub-consultants. Consultant shall also require all of its sub-consultants 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 sub-consultants 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.

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 sub-consultants, 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 7.2, 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 sub-consultants that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the City that Consultant and sub-consultants 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 section 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 sub-consultants hired to provide services pursuant to this Agreement. Any and all sub-consultants 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 &
Data (as defined in Section 7.1) 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 & Data and work in progress prepared by Consultant, whether located at the Project, at Consultant’s place of business, at the offices of a subconsultant, or elsewhere and may employ any other person or persons to finish the Services and provide the materials therefore. 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 for 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 Extra Work approved by the City Manager, satisfactorily completed by Consultant and accepted by the City, plus (3) reimbursable expenses actually incurred by Consultant, as provided for in Exhibit D and approved by the City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deduced 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. OWNERSHIP OF MATERIALS AND CONFIDENTIALITY.

6.1. Documents and Data; Licensing of Intellectual Property. This Agreement creates a fully paid up, exclusive and perpetual license for the City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in or arising from plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, designs, graphic representations and data, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of the City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, or at any time upon five (5) days written notice, Consultant shall provide to the City reproducible copies of all Documents & Data, in a form and quantity requested by the City. The City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by the City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to the City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to the City any such documents pending resolution of the dispute. In addition, Consultant
shall retain copies of all Documents & Data on file for a minimum of four (4) years following completion of the Project or termination of this Agreement, whichever is earlier, and shall make copies available to the City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify the City and provide the City with the opportunity to obtain the documents.

6.2. Sub-consultants. Consultant shall require all sub-consultants to agree in writing that the City is granted a fully paid, non-exclusive and perpetual license for any Documents & Data the sub-consultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data prepared by Consultant or its sub-consultants. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its sub-consultants, or those provided to Consultant by the City.

6.3. Right to Use. The City shall not be limited in any way in its use or reuse of the Documents & Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at the City’s sole risk. If the City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant’s seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

6.4. Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless,
pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 7.2, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by the City of the Documents & Data, including any method, process, product, or concept specified or depicted.

6.5. **Confidentiality.** All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of the City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the City’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

7. **OTHER PROVISIONS.**

7.1. **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.

7.2. **Indemnification.**

7.2.1. **Scope of Indemnity.** To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless the City and its officers, departments, officials, representatives, and
employees (collectively “Indemnities”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its sub-consultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any sub-consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively “Liabilities”) in connection with the Project. Such obligations to defend, hold harmless and to indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

7.2.2. Termination or Completion of Agreement. Neither termination of this Agreement nor completion of the Services under this Agreement shall release Consultant from its obligations under this Section 7.2, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

7.2.3. Additional Indemnity Agreements. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth herein from each and every sub-consultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section 7.2. City’s failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

7.2.4. Successors and Assigns. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this Section.

7.2.5. Compliance with Insurance Requirements. Consultant’s compliance with the insurance requirements does not relieve Consultant from the obligations described in this Section 7.2, which shall apply whether or not such insurance policies are
applicable to a claim or damages.

7.3. **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.

7.4. **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.

7.5. **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
23 Russell Boulevard
Davis, CA 95616
Attn: City Manager

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.

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

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

7.8. 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 sub-consultants 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.

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

7.10. 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.

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

7.12. 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.

7.13. 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 further covenants that, in the performance of this Agreement, no sub-consultant or person having such an interest shall be employed. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City.

7.14. **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. Consultant further agrees to file, or shall cause its employees or sub-consultants to file, a Statement of Economic Interest with the City Clerk 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.

7.15. **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.

7.16. **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.

7.17. **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.

7.18. **Counterparts.** This Agreement may be signed in counterparts, each of
7.19. **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.

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

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**CITY OF DAVIS**

By: ______________________

Steven J. Pinkerton

Its: ______________________

---

**CONSULTANT**

By: ______________________

Its: ______________________

By: ______________________

Its: ______________________

Approved as to form:

__________________________

Harriet A. Steiner

City Attorney
EXHIBIT A

SCOPE OF SERVICES

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant’s proposal.

Cost Allocation Plan
1. Work with selected City staff to define the purpose, uses, and goals for a Cost Allocation Plan and a central service cost allocation in accordance with OMB A-87, ensuring that the development of the plans will be both accurate and appropriate for the City’s current needs.

2. Develop both a Cost Allocation Plan Model in Microsoft Excel for calculating the full costs of providing each City service and an OMB Circular A-87 applicable plan for use with Federal Grants and Programs. The requirements of the Model shall allow for:
   a. The addition or removal of direct and overhead costs so that the cost allocation plan can be developed from a simple plan to a progressively more inclusive plan.
   b. The ability to continuously update the Model from year-to-year as the organizational structure changes and the costs change.
   c. Provide justification to support internal and external rates and/or percentages charged by departments for cost recovery, including Capital Projects.

3. Work with the City in developing service provisions, cost categories, and allocation criteria for current and future programs.

4. Provide on-site training to enable staff to update the Plan on an annual basis, as well as written procedures for updating the plan.

5. Provide four bound and one unbound copy of the Cost Allocation Plan, and one electronic version in Microsoft Excel to the City.

6. Prepare final plans and participate in the presentation to the City Manager, City Council, and City staff. Collect and document comments and concerns, and make necessary adjustments as requested.
**Master Fee Schedule**

1. Update the existing Master Fee Schedule to reflect the current cost of providing services and meet the requirements embodied in Proposition 26.

2. Prepare an Excel-based analysis that identifies each City service, its full cost, the cost currently being recovered, and the recommended cost recovery levels. For each activity, the analysis should take into consideration both direct and indirect costs.

3. Prepare an Excel-based survey that compares the City’s existing fees and service charges to similar cities selected by the City with Consultant’s input.

4. Recommend potential new fees and charges for services that the City currently provides but does not have any fees and/or charges established. Recommendations should be based on practices by surrounding cities that may charge for similar services, industry best practices, or the consultant's professional opinion.

5. Present initial results and recommendations to the City staff and adjust as necessary.

6. Provide four bound and one unbound copy of the Master Fee Schedule report.

7. Deliver a Microsoft Excel-based model for adjusting these fees and charges for the City’s current and future needs, and provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization and changes in cost.

8. Provide on-site training to enable staff to update fees on an annual basis, as well as written procedures for updating the plan.

9. Present the proposed updated Master Fee Schedule to the City Council based on study results. The results of performing comparative fees from surrounding cities should be part of the same City Council briefing.

Report on other matters that come to your attention in the course of your evaluation that in your professional opinion the City should consider.
EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY CITY

During the phase when consultant is collecting data from City staff, the City will provide work space, access to a copier, telephone, and facsimile to consultant.
EXHIBIT C

SCHEDULE OF SERVICES

Consultant’s Work Plan and Project Schedule submitted with proposal will be used to develop Schedule of Services.
EXHIBIT D

PAYMENT

Consultant’s project cost information will be inserted into Exhibit D.
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.

<table>
<thead>
<tr>
<th>Paper Category</th>
<th>Minimum Percentage of “Recovered Material”</th>
<th>Minimum Percentage of “Postconsumer Material”</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-speed Xerographic</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Bond Paper</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Cover Stock</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Envelopes</td>
<td>50</td>
<td>10</td>
</tr>
</tbody>
</table>