

ATTACHMENT 1

AGREEMENT FOR SERVICES

Planning and Design Services for Cinedome Focus Area Master Plan

This Agreement is dated this 20th day of September, 2016, by and between the City of Napa, a municipal corporation (hereinafter referred to as the "City"), and FME Architecture + Design, a C Corporation, (hereinafter referred to as "Consultant").

RECITALS

A. The City requires professional planning services for the Cinedome Focus Area Master Plan, a 5.4-acre area in the 900-block of Pearl Street in Downtown Napa, including services related to site design, building architecture, civil engineering, landscape design, circulation, environmental impacts, and parking design and operations; and

B. The Consultant is qualified and experienced to provide and coordinate such services.

NOW, THEREFORE, said City and said Consultant for the considerations hereinafter set forth, mutually agree as follows:

1. SCOPE OF WORK. Consultant shall perform those services described as Tasks in the Scope of Work attached hereto as Exhibit "A" and incorporated herein by reference within the time frames stated therein.

2. COORDINATION. Consultant shall assign Colin Alley, Project Director, to personally participate in said project and to coordinate the activities of the Consultant.

3. COMPENSATION.

A. City shall pay Consultant as compensation in full for such services and expenses at the rates set forth in the Standard Hourly Rates and Charges attached hereto as Exhibit "B" and incorporated herein by reference. Notwithstanding the above, it is agreed that Consultant shall complete all the services set forth in Exhibit "A" for a total sum not to exceed \$211,500.00. Progress payments will be tied to completion of tasks so all payments are proportional to the work completed.

B. Consultant shall submit itemized monthly statements for work performed. City shall make any payment due within thirty (30) days after approval of the invoice by City, but in no case more than 60 days following receipt of Consultant's invoice for undisputed services.

C. Payments due and payable to Consultant for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of the City. In the event the City has not appropriated sufficient funds for payment of Consultant services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year; payment for additional work is conditional upon future City appropriation.

4. TERM. The term of this Agreement shall be from the date that the Agreement has been executed by all required signatories until December 31, 2017, unless terminated earlier as provided herein; except that the obligations of the parties under Paragraph 12 (Indemnification) and Paragraph 13 (Insurance) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of this Agreement, and the obligations of Consultant to City shall also continue after said expiration date or early termination in relation to the obligation prescribed by Paragraph 10 (Records of Performance), Paragraph 21 (Taxes), and Paragraph 26 (Confidentiality).

5. NOTICES. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

TO CITY: Community Development Department
Attn: Rick Tooker, Director
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660

TO CONSULTANT: Colin Alley
FME Architecture + Design
500 Montgomery Street
San Francisco, CA 94111

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this Paragraph.

6. AMENDMENT OF SCOPE OF WORK. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum merit, etc. for work done without the appropriate City authorization.

7. **RIGHT TO TERMINATE/SUSPEND CONTRACT.** At any time and for any or no reason, City shall have the right to terminate this Agreement, and pay the Consultant such equitable proportion of the total remuneration as the work satisfactorily done by the Consultant at the time of such discontinuance bears to the whole of the work required to be done by the Consultant under the terms of this Agreement. The City shall have the right to terminate Consultant for cause provided that : (i) the City first provides Consultant with a ten (10) day written notice to cure; and (ii) Consultant fails to cure within such ten (10) day period, in which case Consultant shall be liable for any and all damages resulting from such termination. Notwithstanding the above, Consultant shall not be relieved from liability to City for damages sustained by virtue of any breach of this Agreement by Consultant, whether or not the Agreement was terminated for convenience or cause. If the City fails to make undisputed payments to the Consultant in accordance with this Agreement, and fails to remit such undisputed payments within ten (10) days of Consultant's written demand for payment in accordance with the timing requirements of Section 3(b) of this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give seven (7) days' written notice to the City before suspending services. In the event of a suspension of services, the Consultant shall have no liability to the City for delay or damage caused the City because of such suspension of services. Before resuming services, the Consultant shall be paid all undisputed sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The fees payable to Consultant and the time schedule for Consultant's remaining services shall be equitably adjusted.

If the City suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

8. **CORRECTION OF WORK.** The performance of services or acceptance of information furnished by Consultant shall not relieve the Consultant from obligation to correct any defective, inaccurate or incomplete work subsequently discovered and all such work shall be remedied by the Consultant on demand without cost to the City.

9. **DELAYS AND EXTENSIONS.** Time is of the essence concerning performance of this Agreement; however, the Consultant will be granted time extensions for delays beyond the Consultant's control. Time extensions will be equal to the length of the delay or as otherwise agreed upon between the Consultant and the City. Consultant shall perform the work subject to the generally accepted standard of care for performance of such services.

10. RECORDS OF PERFORMANCE. Consultant shall maintain adequate records of contract performance costs, expenses, etc., and make these records available for inspection, audit, and copying by the City during the agreement period and for a period of three (3) years from the date of final payment.

11. SUBCONTRACTING. The City shall be an intended beneficiary of any work performed by a subconsultant for purposes of establishing a duty of care between subconsultant and City. In accordance with Government Code Section 7550, Consultant agrees to state in a separate section of any filed report the numbers and dollars amounts of all contracts and subcontracts relating to preparation of the report.

12. INDEMNIFICATION. To the full extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, and liabilities of any nature that may be asserted by any person or entity including Consultant, to the extent caused by the Consultant's activities hereunder, including the activities of other persons employed or utilized by Consultant in the performance of this Agreement (including design defects and regardless of City's approval, use or acceptance of the work or work product hereunder) excepting liabilities due to the admitted or adjudicated negligence or willful misconduct of City. If the adjudicated or admitted negligence or willful misconduct of City has contributed to a loss, Consultant shall not be obligated to indemnify City for the proportionate share of such loss caused by such negligence or willful misconduct. Notwithstanding anything to the contrary set forth in Section 2778 of the California Civil Code, the indemnification obligation of the Consultant set forth in this Agreement shall not include the duty to defend; provided, however, Consultant agrees to reimburse the City for its reasonable costs incurred in connection with an indemnified Claim upon a final determination of Consultant's liability by a court or arbitrator of competent jurisdiction, such reimbursement shall be limited to the extent of Consultant's liability based upon the comparative fault of Consultant.

13a. Limitation of Liability. City understands and acknowledges that the process for this Project poses certain risks to both Consultant and City. City further understands and acknowledges that the amount of risk that Consultant can accept is tied, in part, to the amount of compensation received for services rendered. Consultant's fee for the Services offered is based on City's agreement to limit Consultant's liability as described below. City further acknowledges that were it not for this promise to limit Consultant's liability, Consultant's compensation would need to increase to address the risks posed by this Project. City, therefore, acknowledging its right to discuss this provision with legal counsel experienced in the design and construction process, as well as other design professionals, voluntarily agrees that, to the fullest extent permitted by law, Consultant's total liability to the City for any and all injuries, claims, liabilities, losses, costs, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's or any subconsultants' negligence, errors, omissions or breach of contract, (collectively "Fault") shall not exceed, at the time that Consultant is found to be at Fault, an amount equal to Consultant's professional liability insurance proceeds available to satisfy such a claim arising under this Agreement.

13b. No Personal Liability. In no event shall the respective officers, directors, shareholders, partners, members, managers and employees of City or Consultant be personally liable for the performance or breach of any obligation under this Agreement, or for any direct, indirect, incidental, or consequential losses or damage of any kind or nature whatsoever caused by any such breach of this Agreement. City and Consultant expressly waive any applicable statute or regulation to the contrary, provided, however, that this limitation shall not apply to the City's obligation to pay all fees due to the Consultant as set forth herein.

14. INSURANCE. Without limiting Consultant's indemnification provided herein, Consultant shall maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers (if other than the State Compensation Fund) with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Consultant, its agents, employees or subcontractors:

A. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000.00 per occurrence. If work involves explosive, underground or collapse risks, XCU must be

included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

(1) The City, its officers, employees and agents, are covered as insureds for liability arising out of the operations performed by or on behalf of Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents and employees.

(2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.

B. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident combined single limit (CSL). Such policy shall contain or be endorsed with the provision that coverage shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.

C. Worker's Compensation insurance meeting statutory limits of Labor Code which policy shall [contain or be endorsed to contain a waiver of subrogation against City, its officers, agents, and employees and] provide for thirty (30) days prior written notice to City in the event of cancellation

D. Professional liability insurance/errors and omission coverage in an amount no less than \$1,000,000.00 combined single limit (CSL). If insurance is written on a claim-made basis, Consultant agrees to maintain such insurance in effect for at least three (3) years following completion of performance under this Agreement.

E. Consultant shall furnish City with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by City. The endorsements shall be on forms provided by City or as approved by City Attorney. Any deductible or self-insured retention over \$100,000.00 shall be disclosed to and approved by City. If Consultant does not keep all required insurance policies in full force and effect, City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

15. STANDARD OF CARE. City relies upon the professional ability of Consultant and representations regarding the type of work to be performed as a material inducement to entering into this Agreement. The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

16. COVENANT AGAINST CONTINGENT FEES. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. CONFLICT OF INTEREST. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest that would conflict with Consultant's duties under this Agreement. Consultant will immediately advise the General Counsel of Authority if Consultant learns of an economic interest of Consultant's during the term of this Agreement. Consultant shall not make or participate in making

or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows, or has reason to know, Consultant has a financial interest other than the compensation promised by this Agreement.

18. STATEMENT OF ECONOMIC INTEREST. If City determines Consultant comes within the definition of Consultant under the Political Reform Act (Government Code §87100), Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with the Clerk of the City of Napa disclosing Consultant and/or such other person's financial interests.

19. DEFAULT. If Consultant should fail to perform any of his obligations hereunder, within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, City may terminate this Agreement by giving Consultant written notice of such termination, stating the reason for such termination. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee.

20. THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

21. INDEPENDENT CONTRACTOR. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of the City and is not entitled to participate in any pension plan, insurance, bonus or similar benefits City provides its employees. In the event City exercises its right to terminate this Agreement, Consultant expressly agrees that he/she shall have no recourse nor right of appeal under rules, regulations, ordinances or laws applicable to employees.

22. TAXES. Consultant agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold the City harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations.

23. EMPLOYMENT PRACTICES. Consultant shall not discriminate in its performance under the Agreement either directly or indirectly on the grounds of race, color, religion, sex, age, national origin, or other prohibited grounds in its employment practices, and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or other prohibited grounds.

24. COMPLIANCE WITH LAW.

A. Consultant shall study and comply with all applicable federal, state and local laws, rules and regulations affecting the Consultant and his/her work hereunder and shall ensure that all subcontractors do the same, including, without limitation, compliance with the prevailing wage requirements of Labor Code Sections 1720 and 1770. Consultant represents and warrants to City that Consultant has and will keep in effect during the term of this Agreement all licenses (including but not limited to the City of Napa business license), permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice Consultant's profession and to do the work hereunder.

B. Consultant agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of Consultant performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Consultant shall make the required documentation available upon request to City for inspection.

25. TITLE TO DOCUMENTS.

A. The parties acknowledge and agree that Consultant shall retain ownership of materials, proprietary methodologies and other creative tangible forms of expression created or owned by Consultant and used in connection with the Project (the "Preexisting Materials" and "Products of Service").

B. Subject to the City's payment of all undisputed amounts due to Consultant hereunder, Consultant hereby conveys to City an exclusive and irrevocable license to all drawings, specification, models, renderings and products of service, excluding the Preexisting Materials as incorporated into the foregoing, prepared in connection with the Project ("Products of Service"), including, without limitation, any materials that may be subject to copyrights and any copyright registrations, and a non-exclusive irrevocable license to use the Preexisting Materials.

C. Consistent with the provisions of Section 25(b), Consultant hereby irrevocably consents that the City shall have the right, without any further consent of the Consultant or any other party, to use or modify the Products of Service for any purposes in connection with the Project, including, without limitation, to complete or modify the Products of Services if Consultant is terminated prior to completing the Services.

D. The Consultant shall indemnify, and hold harmless, the City from all liability, costs, and attorneys' fees incurred which are related to and caused by an infringement of a third party's intellectual property rights, if proven. Should the City become aware of, or receive notice of, potential, accused, or actual infringement of intellectual property rights, the City shall, in its sole option, have the right to engage independent legal counsel to advise the City as to the infringement. Upon an adjudication of City's right to indemnity under the provisions of this paragraph, the costs and fees for such counsel, in proportion to Consultant's proven infringement, shall be borne by the Consultant and shall be immediately recoverable by the City. The Consultant shall have no obligation to indemnify the City for claims of infringement due to Consultant's incorporation of materials into the Products of Service that were provided by or at the City's request.

E. The Consultant understands that the Products of Service are intended specifically for the Project, and Consultant shall use its best efforts not to (nor shall it allow its sub-consultants or employees to) replicate the Products of Service as a whole for any other party or any other project. Further, Consultant shall not transfer or sell the Products of Service or related copyrights, except in connection with a sale of its business. For the purposes hereof, the Products of Service shall be deemed to be replicated by Consultant to the extent Consultant creates any work or plans that are sufficiently similar to the Products of Service as a whole to support a conclusion that such work or plans were copied from, or a duplication of, the Products of Service.

F. If the City subsequently reproduces the Project Documents or creates (or causes others to create) a derivative work based upon the Project Documents created by the Consultant, the City shall remove or completely obliterate the original professional seals, logos, and other indications on the documents of the identity of the Consultant and its sub-consultants and indemnify Consultant for any claims as outlined below. The City and its assigns shall limit their use of the Project Documents produced by the Consultant to this Project site.

G. In the event the City uses or modifies the Project Documents without retaining the authors of the Project Documents, the City releases the Consultant and Consultant's sub-consultants from all claims and causes of action arising from such uses or modification. The City further agrees to indemnify, defend and hold harmless the Consultant and its sub-consultants, and each of their respective officers and employees ("Consultant Indemnitees"), from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon (collectively "losses") accruing or resulting to any and all persons, firms, or any other legal entities, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of such use or modification of the Project Documents, except that the City shall not have a duty to indemnify the Consultant Indemnitees for Losses if a court of competent jurisdiction finds that the Losses result from the sole negligence (as between the parties hereto as well as any other persons, firms, or legal entities) or willful misconduct of the Consultant.

H. Except for the assignment and licenses granted in Section 25, no other assignment, license, or right shall be deemed granted or implied under this Agreement.

I. Consultant agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement or until ninety (90) days after receipt of final payment from City.

26. **RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE.** Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may in writing demand adequate assurance of due performance, and until it receives such assurance, may, if reasonable, suspend any performance for which the agreed return has not been received. "Reasonable" includes not only the conduct of a party with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceed fifteen (15) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

27. **CONFIDENTIALITY.** Consultant shall treat all information obtained from City in the performance of this Agreement as confidential and proprietary to City. Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this Agreement as confidential. Consultant agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Consultant's scope of work. Consultant will not disclose any information prepared for City, or obtained from City or obtained as a consequence of the performance of work, to any person other than City, or its own employees, agents or subcontractors, who have a need for the information for the performance of work under this Agreement unless such disclosure is specifically authorized in writing by the City. Consultant shall advise City of any request for disclosure of information or of any actual or potential disclosure of information. Consultant's obligations under this paragraph shall survive the termination of this Agreement.

28. **ACCIDENT REPORT.** If any damage (including death, personal injury, or property damage) occurs in connection with the performance of this Agreement, Consultant shall promptly submit to the City Clerk's Office a written notice of such accident with the following information:

- A. Name and address of the injured or deceased person(s);
- B. Name and address of any witness;
- C. Name and address of Consultant's insurance company; and
- D. A detailed description of the damage and whether any City property was involved.

29. **ELECTRONIC COMMUNICATIONS.** During the course of this Agreement, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Consultant and the City acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses or similar destructive electronic programs. Consultant and the City view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Consultant agrees to update its system with the software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

30. **Right to Publish:** The Consultant shall have the right to include representations of the Products of Service of the Project among Consultant's promotional and professional materials. The

Consultant's materials shall not include the City's confidential or proprietary information if the City has previously advised the Consultant in writing of the specific information considered by the City to be confidential or proprietary.

31. ELECTRONIC OR MAGNETIC DATA. If the Scope of Work requires that Consultant provide documents in electronic or magnetic formats, they shall be provided in a manipulative form. City recognizes that electronic or magnetic data and its transmission may be damaged, may develop inaccuracies during use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. Consultant shall not be liable for any loss of use, profit, or any other damages arising from City's reuse, misuse, modification, or misinterpretation of the data submitted in electronic or magnetic form. Nothing contained in this paragraph shall affect the indemnification or standard of care required hereunder for Consultant with respect to Consultant's work and work products delivered in hard copy.

32. GENERAL PROVISIONS.

A. Headings. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

B. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

C. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.

D. Attorney's Fees. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred, whether or not such action proceeds to judgment.

E. Assignment and Delegation. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated without the written consent of City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

F. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

G. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

H. Time. Time is of the essence in carrying out the duties hereunder.

I. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

J. Each Parties' Role in Drafting the Agreement. Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the

Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

K. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF NAPA:

(Signature)

Mike Parness, City Manager
(Type name and title)

ATTEST:

(Signature)

Dorothy Roberts, City Clerk
(Type name and title)

COUNTERSIGNED:

(Signature)

Desiree Brun, City Auditor
(Type name and title)

APPROVED AS TO FORM:

(Signature)

Michael W. Barrett, City Attorney
(Type name and title)

Budget Code: 49711-53201

CONSULTANT:

FME Architecture + Design
C Corporation

(Type name of Consultant/form of organization)*

By:

(Signature)

Eric Ibsen, Chief Design Officer

By:

(Signature)

Andrew Wilson, Chief Financial Officer

Address:

500 Montgomery Street
San Francisco, CA 94111

Telephone:

415-434-0320

*Corporation, partnership, limited liability corporation, sole proprietorship, etc. Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President and the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

EXHIBIT "A"

SCOPE OF WORK

PROJECT SCOPE:

5.4 acre (approx.) project focal area:

- Conceptualization of Scenarios for Mixed-Use development across multiple public and private parcels, as well as public rights-of-way
- Development of Strategy and Design for a parking plan to accommodate both existing neighborhood demand, and newly generated on-site demand
 - o Surface parking
 - o Structured parking
- Production of Development Guidelines to catalyze private development within the focal area.

FME ("Architect") shall provide the Basic Services outlined below, in coordination with the Consultant Team.

A. Phase 1: Project Kick-Off and Site Visit

1. Preliminary evaluation of materials provided by The City of Napa, as the basis for our work, going forward, including: Downtown Specific Plan and associated E.I.R., survey drawings, Oxbow Flood Bypass drawings, temporary and planned future permanent flood control barrier information, and other materials pertinent to this study.
2. Organization/Coordination of, and attendance at, a kick-off meeting/site walk with the City of Napa team, and all key consultant team members
3. Dissemination of a follow-up memorandum which memorializes the discussion(s) and direction afforded during both the kick-off meeting and the site walk. This memorandum will also articulate base materials provided to the Consultant Team, and any required additional materials to produce our work.

Deliverables:

- Memorandum as follow-up to materials review, kick-off meeting, and site walk

B. Phase 2: Conceptual Site Design Studies

1. Develop an iterative series of site planning studies and programmatic "bubble" diagrams to flesh out strategic vision options for the focus area, inclusive of land uses, open space, building footprints, easements, parking, etc.
2. Direct and coordinate the Consultant team in the production of supporting materials to further clarify these strategic plan studies, including:
 - o Landscape and hardscape strategies for open space definition and connection to surrounding context
 - o Parking studies for structured and surface parking strategies suitable to accommodate both on-site and off-site demand (as part of the parking exempt district)
 - o Civil studies of C-3 stormwater treatment strategies, overland release, and flood bypass flood barrier impacts on future development scenarios

- Public Art conceptualization studies for potential to tie in to site planning concepts.
- 3. Further elaborate preferred design concepts/site studies through three-dimensional massing studies which serve to outline setbacks, stepbacks, scale of public open space, and height and scale of building envelopes as related to the surrounding context.

Deliverables:

- Colored conceptual site planning diagrams (“bubble” diagrams) – maximum of three (3)
- Associated area and parking calculations for each site planning diagram
- Associated notes outlining public/private nature of various project components, phasing of the work, and property line adjustments required for each site planning diagram
- Public Art preliminary concepts status report
- Three-dimensional massing studies of two (2) concept site plans utilizing SketchUp or Revit production software.

C. Phase 3: Parking Alternatives

1. Development of alternative parking strategies, both physical and operational, to accommodate the public need along with the demand generated within the focus area, acknowledging the various scenarios identified within the RFP document, relative to each of the key stakeholder parcels (Napa Sanitation District, City of Napa, and SyWest Development)
2. Coordination of FME’s services with those of Watry Design, Inc.
3. Development of Parking calculations and relative cost breakdowns for various scenarios
4. Develop a scenario which considers the privatization of parking, both on private and public land

Deliverables:

- Alternative parking strategy plans and diagrams – maximum of three (3)
- Associated parking tabulations as related to development schemes produced in Phase 2

D. Phase 4: Public Outreach/Meetings

1. Preparation of presentation materials to adequately portray proposed/under consideration development scenarios to the public, planning commission, and city council
2. Attendance at one (1) workshop meeting in the City of Napa.
3. Production of report outlining findings of workshop meeting
4. Attendance at two (2) public meetings with the Planning Commission and City Council in the City of Napa

Deliverables:

- Presentation materials (digital and/or physical) for one (1) workshop meeting
- Digital presentations for two (2) public meetings with planning commission and city council

E. Phase 5: Draft Master Plan + Environmental Analysis

1. Based on the preferred scenario from Phases 2 and 3, create a draft of the Master Plan document, for review and comment by the City of Napa, and other interested stakeholders, including:
 - a. Land use diagram
 - b. Design Guidelines for buildings
 - c. Urban design guidelines for streets, walkways, and open space
 - d. Standards for lighting, railings, furnishings, etc.
 - e. Public Art recommendations and focus throughout the area
2. Coordination of all consultants to incorporate information as required to illustrate critical components of the plan scenario, including, but not limited to:
 - a. Land use diagram
 - b. Square footage by land use calculations
 - c. Parking calculations
 - d. Public versus Private components
 - e. Property line configuration(s)
 - f. Construction phasing
3. Coordination of work of FirstCarbon Solutions and W-Trans on production of Draft Environmental Analysis

Deliverables:

- Draft Master Plan document
- Draft Environmental Analysis

F. Phase 6: Final Master Plan + Environmental Analysis

1. Produce Final Master Plan document, based on written comments received from the City team.
2. Produce Final Environmental Analysis, based on written comments received from the City team

Deliverables:

- Final Master Plan document
- Final Environmental Analysis

G. Services beyond the Architect's Scope of Basic Services include, but are not limited to the following, and are subject to Additional Services and Charges:

1. Meetings in excess of the scope described above
2. Preparation of mock-ups, presentation quality models, photo-realistic renderings or other 3-D hand or digital perspective drawings, except as described above
3. Construction cost estimating
4. Any services required beyond the schedule outlined in this proposal
5. Any other services not otherwise included in this Agreement, or not customarily furnished in accordance with generally accepted architectural practices

PROJECT BUDGET:

Our team's professional fees are proposed on a Fixed Fee/Stipulated Sum basis, as outlined within the Request for Proposal (RFP). The fees are based on the Scope of Work outlined in our Scope of Services, along with our Consultants' proposals. These fees assume all consultants on the team will be directly contracted to the City. Should the desire be to have a

single-source contract with FME, we can administer the contracts of the other Consultants on our team for a 10% administrative mark-up.

Our team's proposed professional fees for the requested base scope of work total \$200,000. We feel that this amount will allow us to professionally and competently address all aspects of the Project, and provide the City team with a thoroughly vetted and complete Master Plan.

Firm	Fixed Fee	Total Hours allotted	Notes
FME Architecture + Design	\$85,520	498 hrs.	See attached "Revised Consultant Team Fees Matrix," for breakdown of fees per Phase of Work.
Smith & Smith	\$11,000	65 hrs.	
Langan	\$19,480	86 hrs.	
Watry	\$14,000	68 hrs.	
First Carbon Solutions	\$65,000	508 hrs.	
Laura Grigsby, Public Art	\$5,000	32 hrs.	
TOTALS	\$200,000	1,257 hrs.	<i>\$211,500, total, if contracted through FME</i>

EXHIBIT "B"

COMPENSATION RATES AND CHARGES

FME 2016 Hourly Rates

Executive Principal	\$205
Principal	\$190
Project Director	\$175
Senior Project Architect	\$175
Senior Project Manager	\$160
Senior Designer	\$135
Senior Architectural Technician	\$150
Project Manager	\$135
Project Architect / Designer	\$125
Job Captain	\$115
Staff Designer 2	\$105
Staff Designer 1	\$ 95
Design Intern	\$ 90
Administration	\$ 65

EXHIBIT "C"

CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the Chief Design Officer, and a duly authorized representative of the firm of FME Architecture + Design, whose address is 500 Montgomery Street, San Francisco, CA 94111, and that neither I nor the above firm I here represent has:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit to secure this Agreement.
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

Except as here expressly stated (if any);

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

Date

Eric Ibsen, Chief Design Officer
FME Architecture + Design