

SERVICES AGREEMENT (PROFESSIONAL SERVICES)
On-Call Environmental Consulting Services

City Agreement No. _____

City Budget Code: Various CIP Expenditure Accounts

This Services Agreement (Professional Services) for On-Call Environmental Consulting Services (“**Agreement**”) by and between the City of Napa, a California charter city (“**City**”), and Consultant's full legal name and entity type (“**Consultant**”), is effective on the Effective Date identified on the signature page.

RECITALS

A. The City desires to obtain the services more particularly described in this Agreement and Exhibit “A,” and generally including professional environmental consulting services on an on-call basis.

B. On June 24, 2019 the City issued a request for proposals for on-call professional environmental consulting services, and on July 19, 2019 the Consultant submitted a proposal demonstrating the Consultant's qualifications and experiences to provide such services.

NOW, THEREFORE, the City and the Consultant, for the mutual consideration described herein, agree as follows:

1. SCOPE OF SERVICES.

1.1. Services. Consultant, acting in its capacity as an environmental consultant, licensed and in good standing under California law, will perform the services described in the *Scope of Services and Schedule of Performance*, attached hereto as **Exhibit “A”** and incorporated herein by reference (“**Services**”), in accordance with the terms and conditions of this Agreement and to the satisfaction of the City's authorized representative, John Ferons, Senior Civil Engineer, (“**City's Authorized Representative**”).

1.2. Standard of Care. In performing the Services, Consultant will meet or exceed the applicable standard of care for and exercise the degree of skill and diligence ordinarily used by reputable professionals within the greater San Francisco Bay Area who provide the same or similar type of professional services as the Services required under this Agreement. Consultant will require and ensure that all of its employees, subconsultants, or agents performing or contributing to the Services will comply with the requirements of this Agreement.

1.3. Independent Contractor. Consultant will control the manner and means for performing the Services, acting as an independent contractor and not as an employee of the City. Consultant will not be entitled to any of the benefits that the City provides to its employees, including, but not limited to, health or retirement benefits.

1.4. Subcontracting. If Consultant subcontracts with a subconsultant to perform any of the Services, the City is deemed an intended beneficiary of that subcontract and the subconsultant will owe a duty of due care to the City. City reserves the right to approve or reject any proposed subconsultant, based on the subconsultant's qualifications, relevant experience, or reputation.

1.5. Third Party Beneficiaries. Except to the extent expressly stated herein, this Agreement will not be construed to create any rights in third parties.

1.6. Time for Performance. Time is of the essence for the performance of all Services and duties under this Agreement. Consultant will commence and complete all Services by the date and within any timeframes set forth in Exhibit “A.” Services for which times for performance are not specified in this Agreement will be commenced and completed by Consultant in a reasonably prompt and timely manner

based upon the circumstances and direction from the City's Authorized Representative. Consultant will submit all requests for extensions of time to the City in writing no later than ten days after the start of the circumstances or events giving rise to the delay, and no later than the time by which performance is due. The City's approval of any extension of time for performance of the Services will not operate to waive the City's rights or remedies with respect to damages caused by Consultant's delay.

1.7. Errors and Omissions. Consultant is solely responsible for costs arising from its errors and omissions, including increased construction costs or delay costs. Upon City's request, Consultant will promptly correct its errors and omissions, at no cost to the City.

1.8. Unsatisfactory Services. Upon written notice from the City that any of the Services are unsatisfactory or fail to comply with the requirements of this Agreement (collectively, "**Unsatisfactory Services**"), Consultant will promptly correct or cure any such Unsatisfactory Services as specified in the City's written notice. Consultant will not be entitled to any additional compensation or extension of time to correct or cure the Unsatisfactory Services. Consultant's correction or cure of Unsatisfactory Services will not operate to waive the City's rights or remedies with respect to any damages caused by the Unsatisfactory Services, the cost of which may be recovered by the City as an offset from payment otherwise due or to become due to Consultant.

2. COMPENSATION.

2.1. Payment. The City will pay Consultant for Consultant's time and authorized expenses necessary to perform the Services, at the rates and charges set forth in the *Compensation Rates and Charges* attached hereto as **Exhibit "B"** and incorporated herein by reference, as compensation in full for Services satisfactorily performed in compliance with this Agreement. Consultant's total compensation for performing the Services may not exceed **\$250,000** without prior written authorization from the City. If the City authorizes Consultant to perform services in addition to the Scope of Services set forth in Exhibit "A," Consultant will be compensated in accordance with the rates and charges in Exhibit "B." Consultant will not be entitled to any compensation for additional services performed without the City's prior written consent, or which exceed the scope of the City's written consent.

2.2. Invoices. Consultant will submit a monthly itemized invoice to the City's Authorized Representative for the Services provided during the preceding month. At a minimum, the invoice will identify the Services performed, the hours spent performing the Services, the applicable hourly rate(s), and any authorized expenses based on the rates and charges authorized in Exhibit "B." The City will pay the Consultant within 30 days after approval of each invoice, with the exception of any disputed amounts.

3. AUTHORIZED REPRESENTATIVE. Consultant hereby assigns name of Consultant's Authorized Representative to serve as the Consultant's authorized representative ("**Consultant's Authorized Representative**"), to personally participate in and manage the Services provided under this Agreement, and to serve as the primary point of contact for all matters pertaining to this Agreement.

3.1. Substitutions. As a material inducement to entering into this Agreement, the City has relied upon Consultant's representations regarding Consultant's qualifications (including the qualifications of Consultant's Authorized Representative, its personnel, and its subconsultants, if any, as identified on Exhibits "A" and "B"). Consultant will not replace Consultant's Authorized Representative (or any of its personnel or its subconsultants, if any, as identified on Exhibits "A" and "B") without the City's prior written consent.

4. NOTICES. All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

TO CITY: John Ferons, Senior Civil Engineer
CITY OF NAPA
P.O. Box 660
Napa, CA 94559-0660
jferons@cityofnapa.org

TO CONSULTANT: **INSERT name,**
title,
address,
and email address of
Consultant's Authorized Representative

5. TERM. The term of this Agreement begins on the date it is signed by the City Clerk, below, attesting full execution of the Agreement by both parties ("**Effective Date**"), and ends two (2) calendar years from the Effective Date, unless terminated earlier as provided herein. The following provisions will survive expiration or termination of this Agreement: Section 7.2 (Dispute Resolution), Section 8.1 (Confidentiality), Section 8.4 (Records of Performance), Section 10 (Indemnification), Section 11.4 (Professional Liability), Section 13.3 (Taxes), and Section 14 (General Provisions).

6. CITY'S RIGHT TO TERMINATE. The City may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to Consultant, effective upon the date stated in the notice. If the City terminates the Agreement it will pay Consultant for all Services satisfactorily performed up to and including the effective date of the termination, subject to the provisions of Sections 2 and 8.2.

7. DEFAULT AND DISPUTE RESOLUTION.

7.1. Default. Consultant will be deemed in default of this Agreement if Consultant is not complying with the terms of this Agreement, or the City has reason to believe that Consultant's ability to perform the Services has been or will be impaired. If either of these circumstances exist, the City may give written notice of default to Consultant and demand that the default be cured or corrected within ten days of the notice, unless the City determines that additional time is reasonably necessary to cure the default. If Consultant fails to cure the default within of the time specified in the notice, and the Consultant fails to give adequate written assurance of due performance within the specified time, then the City may terminate this Agreement in accordance with Section 6, or the City may pursue dispute resolution in accordance with Section 7.2.

7.2. Dispute Resolution. If any dispute arises between the parties in relation to this Agreement, the Authorized Representatives for each party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. If the parties are unable to resolve the dispute, in whole or in part, through informal discussions, the parties agree to participate in mediation. Notwithstanding the existence of a dispute, the Consultant will continue providing the Services during the course of any dispute, unless otherwise directed by the City.

7.2.1. Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session will take place within 60 days of the date that such notice is given, or sooner if reasonably practicable. The parties will jointly appoint a mutually acceptable mediator. The parties will share equally the costs of the mediator; however, each party will pay its own costs of preparing for and participating in the mediation, including any legal costs.

7.2.2. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute. In addition, any claims by Consultant arising from or related to this Agreement, are subject to the claim presentment requirements in the Government Claims Act (Government Code section 900 et seq.).

8. INFORMATION AND RECORDS.

8.1. Confidentiality. Consultant will not disclose any information or records related to the performance of this Agreement, including information and records received from the City, as well as information and records created by the Consultant, to any person other than a City employee, unless and only to the extent that the City provides the Consultant with prior written consent to make a disclosure. Consultant will notify the City's Authorized Representative of any request for disclosure of information, or any actual or potential disclosure of information, under this Agreement. Consultant's obligations under this section will survive the termination of this Agreement.

8.2. Title to Records. All original documents or records ("**work product**"), whether paper or electronic, required by this Agreement to be prepared by Consultant (including its employees and subconsultants), whether complete or in progress, are the property of the City. Consultant will promptly deliver all such work product to the City at the completion of the Services, upon termination, or upon demand by the City. However, Consultant may make and keep copies of the work product.

8.3. Contract Cost Disclosure. For any document or report prepared in whole or in part by Consultant pursuant to this Agreement, Consultant will include the numbers and dollar amounts of related contracts or subcontracts as further specified by Government Code Section 7550.

8.4. Records of Performance. Consultant will maintain adequate records of performance under this Agreement (including Services provided, invoices for payment, and payments received) and make these records available to the City for inspection, audit, and copying, during the term of this Agreement and until four years after the Agreement has expired or been terminated.

8.5. Electronic Communications. Consultant will use reasonable good faith efforts to avoid transmitting electronic viruses or other damaging coding, and will promptly advise the City if Consultant discovers that an electronic virus or similar destructive coding may have been transmitted to the City.

8.6. Copyrights/Patents. In performing the Services under this Agreement, Consultant will not unlawfully infringe on any copyrighted or patented work. Consultant is solely responsible for the cost of any authorizations necessary to use any copyrighted or patented work.

9. ACCIDENT REPORT. If any death, personal injury, or property damage occurs in connection with the performance of the Services, Consultant will promptly submit to the City Clerk's Office a written notice of the incident of damage with the following information:

9.1. A description of the damage including date, time, and location, and whether any City property was involved;

9.2. Name and contact information of any witness;

9.3. Name and address of the injured or deceased person(s); and

9.4. Name and address of Consultant's insurance company.

10. INDEMNIFICATION. To the full extent permitted by law, Consultant will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "**Liability**") of any nature, arising out of, pertaining to, or relating to Consultant's negligence, recklessness, or willful misconduct in the performance of this Agreement. Consistent with Civil Code Section 2782, Consultant will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. To the extent that Services are "design professional services," as defined by Civil Code Section 2782.8, the cost to defend charged to the Consultant will not exceed the Consultant's proportionate percentage of fault. Consultant's indemnification obligations under

this Agreement are not limited by any limitations of any insurance held by Consultant, including, but not limited to, workers' compensation insurance.

11. INSURANCE. Without limiting Consultant's indemnification obligations in section 10, Consultant will procure and maintain throughout the period of this Agreement, the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best 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:

11.1. General Liability Policy. Comprehensive or Commercial General Liability Insurance ("CGL") at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence. If the Services involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate will be twice the required occurrence limit.

11.2. Automobile Liability Policy. 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.

11.3. Workers' Compensation. Workers' Compensation insurance meeting statutory limits of the Labor Code. The workers' compensation policy will contain or be endorsed to contain a waiver of subrogation against the City, its officials, officers, agents, and employees.

11.4. Professional Liability. Professional liability insurance insuring against Consultant's errors and omissions in performing the Services, with a policy limit of at least \$1,000,000. The professional liability insurance will include prior acts coverage sufficient to cover all Services provided by Consultant, and which will remain in effect for four years following expiration or termination of this Agreement.

11.5. Endorsements. The CGL and automotive liability policies will contain or be endorsed with the following provisions:

11.5.1. The City, its officers, elected or appointed officials, employees, volunteers, and agents, are covered as additional insureds for liability arising out of the operations performed by or on behalf of Consultant. The coverage will contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, volunteers, and agents.

11.5.2. The Consultant's insurance is primary and no insurance held by the City will be called upon to contribute to a loss.

11.5.3. The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

11.6. All Policies.

11.6.1. For all insurance policies required under this Agreement, prior to the City's execution of this Agreement, Consultant will furnish the City with certificates and original endorsements effecting the required coverage. Each certificate of insurance will state that the coverage afforded by the policy or policies will not be reduced, cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Notice required under this subsection will be sent by certified mail. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by City or as approved by City's Risk Manager.

11.6.2. Any deductible or self-insured retention of \$100,000 or more will be disclosed to the City prior to the City's execution of this Agreement and is subject to approval by the City.

11.6.3. If Consultant does not keep all required insurance policies in full force and effect, the City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

12. CONFLICTS OF INTEREST. Consultant warrants that as of the Effective Date of this Agreement it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. Consultant further warrants that in the performance of the Services, Consultant will not employ or enter into a subcontract with any person or entity having any such conflict of interest.

12.1. Financial Interest. Consultant will not make or participate in making or in any way attempt to use Consultant's position to influence a City decision in which Consultant knows, or has reason to know, Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that it has diligently conducted a search and inventory of its financial 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 a financial interest that would conflict with Consultant's duties under this Agreement. Consultant will immediately notify the City in writing if Consultant learns of a financial interest that may conflict with Consultant's obligations under this Agreement.

12.2. Covenant Against Contingent Fees. Consultant warrants that it has not employed, retained, or entered into a contract with any person or entity, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any person or entity, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the making of this Agreement. For breach or violation of this warranty, the City may void this Agreement without liability or any further obligation to Consultant, or, alternatively, may elect to deduct from payments due or to become due to Consultant, the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

12.3. Statement of Economic Interest. If the City determines Consultant (or any of its employees or subconsultants) is subject to disclosure requirements under the Political Reform Act (Government Code section 87100 et seq.), Consultant (including any required employees or subconsultants) will complete and file a "Statement of Economic Interest" (Form 700) with the City Clerk's Office disclosing Consultant's financial interests.

13. COMPLIANCE WITH LAW.

13.1. Legal and Licensing Compliance. Consultant will comply with all applicable federal, state and local laws, rules, and regulations related to the Services under this Agreement. 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 or perform the Services.

13.2. Nondiscrimination. At all times during the term of this Agreement, Consultant will comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination based on race, ethnicity, color, national origin, religion, marital status, age, sex, sexual orientation, disability (including any physical or mental impairment that substantially limits a major life activity), medical condition, or any protected class.

13.3. Taxes. Consultant will file tax returns as required by law and pay all applicable taxes on amounts paid pursuant to this Agreement. Consultant will be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes.

13.4. Provisions Deemed Inserted. Every provision of law required to be inserted or referenced in this Agreement will be deemed to be inserted or referenced.

14. GENERAL PROVISIONS.

14.1. Headings. The heading titles for each section 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.

14.2. 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 will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

14.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will 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 will be filed and heard in a court of competent jurisdiction in the County of Napa.

14.4. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

14.5. Assignment and Delegation. This Agreement will not be assigned or transferred in whole or in part, nor will any of the Consultant's duties be delegated, without the City's prior written consent. Any attempt to assign, transfer, or delegate this Agreement, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

14.6. Modifications. This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

14.7. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

14.8. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. 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. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

14.9. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

15. SIGNATURES.

15.1. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

15.2. 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 executed this Agreement to be effective on the Effective Date set forth below.

CITY:
CITY OF NAPA, a California charter city

CONSULTANT:
Consultant's full legal name including entity type

By: _____
Julie B. Lucido, Public Works Director

By: _____
name & title: person signing for Consultant

ATTEST:

Tiffany Carranza, City Clerk

By: _____
name & title: person signing for Consultant

Date: _____
("Effective Date")

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES AND SCHEDULE OF PERFORMANCE

1.0. **SCOPE OF SERVICES.** Consultant will perform the Services described in this Exhibit "A," in accordance with the terms of the Agreement.

1.1. **TYPE OF SERVICES.** The professional services may include, but not limited to, the following:

Project Management

Project Kick-off Meeting where, at the time a project is assigned, the City will provide all existing information, data, and maps files pertaining to the assigned project to the Consultant. The Consultant will be required to verify the existing information provided and notify the City of any deficiencies that may be discovered.

Project Coordination where, as the project progresses, the Consultant's Project Manager will be available for periodic meetings to review the progress of any work product and to discuss any changes, as needed.

Public Outreach/Meetings including developing project informational exhibits for public's awareness of City projects, conducting outreach to project stakeholder, and attending public meetings, as needed.

Preparing Environmental Documents

This includes preparing California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) documents in accordance with Federal, State and City practices, regulations, policies, procedures, manuals, and standards, as appropriate. CEQA/NEPA documents including, but not limited to;

- Categorical Exemptions/Exclusions
- Initial Study/Mitigated Negative Declaration/Negative Declarations
- Environmental Assessments and Studies
- Environmental Impact Reports
- Mitigation Monitoring and Reporting Program

Biological Resources

This includes providing science-based analysis and environmentally sound solutions as it relates to an assigned project. Biological resources services may include, but not limited to;

- Natural Resource Assessment
- Impact avoidance and mitigation planning
- Dewatering and species protection plans
- Biological construction monitoring
- Habitat Restoration and Mitigation Planning
- Wetland and Jurisdictional Waters Delineations
- Construction Monitoring and Reporting
- Emergency Project Documentation and Reporting
- GIS Mapping

Design Services

This includes providing civil/landscape design services for projects, such as for river, creek or stream enhancement and restoration projects, preparing plans, technical specifications and cost estimates including but not limited to;

- Natural channel restoration
- Fish passage
- Flood control
- Public access, trails, & parks
- River & streambank stabilization
- Native revegetation
- Hydrologic & hydraulic analysis
- Master planning
- SWPPPs

Environmental Compliance

This includes assisting the City with obtaining the necessary regulatory permits as well as to comply with permitting conditions throughout the life of the assigned project. The necessary regulatory permits may include, but not limited to;

- Regional Water Quality Control Board Section 401
- US Army Corps of Engineers Section 404
- California Fish and Wildlife 1602 Lake and Streambed Alteration Notification
- Rivers and Harbors Act

2.0. SCHEDULE OF PERFORMANCE.

2.1. REQUESTS FOR SERVICES. Services shall be grouped by task order and by Capital Improvement Project. On each task order, the City shall provide a written request for proposal to the Consultant describing the work to be performed and a schedule of deliverables. The Consultant shall respond with a proposal that includes a detailed scope of work in accordance with the services listed above, a fee for the work based upon the attached Exhibit "B" Compensation Rates and Charges and an acknowledgement of the schedule of deliverables. The Consultant shall only commence with work after written notice by the City to proceed on any task order. In no case shall a task order include work on more than one Capital Improvement Project. The Consultant shall submit a final report of deliverables at the conclusion of all task orders. Task orders shall be tracked separately on the Consultant's invoice.

3.0. PREVAILING WAGE COMPLIANCE. If this Agreement includes work performed during the "design and preconstruction phases of construction" (including inspection or field surveying services), as defined by "Prevailing Wage Laws" (as set forth in the California Labor Code, including section 1720 et seq.), the City hereby determines that those Services are "public works," and this Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, and all related regulations, including requirements pertaining to wages, working hours, and workers' compensation insurance, and the following provisions. Subconsultants performing "public works" under this Agreement are subject to all of the requirements of this Section.

3.1. Prevailing Wages. Consultant must comply with the prevailing wage requirements applicable in Napa County for each craft, classification, or type of worker needed to perform the Services, including employer payments for health and welfare, pension, vacation, and apprenticeship. The prevailing wage rates are on file with the City Engineer's office and are also available online at <http://www.dir.ca.gov/DLSR>. Pursuant to Labor Code section 1775, Consultant will forfeit to City as a penalty up to \$200 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate, in addition to paying each such worker the difference between the applicable prevailing wage rate and the amount actual paid to the worker.

- 3.2. Working Hours. Pursuant to Labor Code section 1810, eight hours of labor constitutes a legal day's work. Pursuant to Labor Code section 1813, Consultant will forfeit to City as a penalty, the sum of \$25 for each day during which a worker employed by Consultant is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such worker is paid overtime wages pursuant to Labor Code section 1815. All Services must be performed during City's regular business days and hours, except as otherwise specified in this Agreement or subject to City's prior written authorization.
- 3.3. Payroll Records. Consultant must maintain certified payroll records in compliance with Labor Code sections 1776 and 1812, and any implementing regulations promulgated by the Department of Industrial Relations ("DIR"). For each payroll record, Consultant must certify under penalty of perjury that the information in the payroll is true and correct and complies with the requirements of Labor Code sections 1771, 1861, and 1815. Consultant must electronically submit certified payroll records as required by Labor Code section 1771.4(a).
- 3.4. Apprentices. If the total compensation payable under this Agreement is \$30,000 or more, Consultant must comply with the apprenticeship requirements in Labor Code section 1777.5.
- 3.5. Compliance. The Agreement is subject to compliance monitoring and enforcement by the DIR. Pursuant to Labor Code section 1725.5, Consultant must be registered with the DIR to perform public works projects, subject to any applicable exceptions, if any. Consultant must post all job site notices required by laws or regulations pursuant to Labor Code section 1771.4. Pursuant to Labor Code section 1861, by executing this Agreement, Consultant certifies as follows: "I am aware of the provisions of Labor Code 3700 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 I will comply with such provisions before commencing performance of the work on this contract."

EXHIBIT "B"

COMPENSATION RATES AND CHARGES

1. AUTHORIZED HOURLY RATES:

Consultant will be compensated for time reasonably necessary to provide the Services based on the following hourly rate schedule, subject to the not-to-exceed limit in Section 2.1 of the Agreement:

INSERT *Rate Schedule*