

**CITY OF NOVATO**

**REQUEST FOR PROPOSALS**

**Date Issued: August 21, 2018**

**LABOR RELATIONS/NEGOTIATOR SUPPORT SERVICES**

**PROPOSALS (SEALED) DUE BY:  
FRIDAY, SEPTEMBER 21, 2018 @ 5:00P.M.**

**CITY OF NOVATO  
Administrative Services Department  
Attention: Michael L. Antwine II, Assistant City Manager  
922 Machin Avenue  
Novato, CA 94945**

**Request for Proposal  
Negotiator – Labor Relations 2018-19**

**INTRODUCTION / DESCRIPTION OF PROJECT**

**Introduction**

The City of Novato (City) invites interested professional labor negotiators, law firms, and attorneys to submit written proposals to provide labor negotiation services to the City of Novato. The goal of this Labor Negotiation Services RFP is to identify a consultant or group that can negotiate a new Memorandum of Understanding (MOU) for the City's five (5) represented employee groups referred to as "Units A, B, C, D and H". The current 3-year term of these MOU's expires on June 30, 2019.

The City and the following represented employee bargaining units have met and conferred in good faith to negotiate labor agreements during the last five negotiation cycles, typically reaching two to three year agreements with each group.

Unit A - Novato Police Managers Association –	14 members
Unit B - Novato Police Association	43 members
Unit C - SEIU Local 1021 Mid-Managers	3 members
Unit D - SEIU Local 1021 General Employees	84 members
Unit E - Western Council of Engineers (no longer active)	5 members
Unit H - Novato Police Civilian Employees Association	16 members

The City also has a Confidential Group (Unit F) with 12 members, and the Exempt Management Group (Unit G) with 15 members which are non-represented groups.

City staffing levels have remained consistent since 2014 with approximately 208 regular employees (full and part-time) and additional temporary staffing for seasonal work.

**Negotiations History**

During the economic downturn, all employee bargaining units agreed to significant concessions. This included no cost of living adjustments for most employee groups from 2008 through 2012 and a 5% reduction in salary and furloughs. In July of 2013, employees received a 1.5% COLA for the first time since 2008. Since the 2012-2014 negotiations, COLAs and salary adjustments have been a regular part of the tentative agreements on the part of the City with the most recent 3% COLA effective, July 1, 2018.

Copies of the current MOU's and employee Benefits plans are available on the city's website: <http://novato.org/government/human-resources/collective-bargaining-agreements-cbas>

**SCOPE OF SERVICES TO BE PROVIDED**

The selected firm will be expected to provide the services identified within this section, and other labor negotiation related services. The categories listed represent the minimum services expected to be provided to the City of Novato during the performance and duration of this

agreement. Respondents to this RFP shall identify and clearly list and describe any other related services they will provide as part of this agreement:

Consultant will work directly with the City's primary contacts (City Manager and Assistant City Manager), who will be managing the 2018-2019 Labor Negotiations, and other city representatives, as directed by the city's primary contact.

“Basic Level of Services”:

1. Assist in developing a labor negotiations schedule for city staff
2. Review and revise existing MOUs language to identify conflicts with existing City policy and/or recommendations for the development and adoption of new or revised relevant policies
3. Strategize, advise, lead and represent the City as its chief labor negotiator in negotiations regarding the current Memorandum of Understanding between the City and each Unit's representative union
4. Participate in meet and confer sessions & consult on mandatory topics of bargaining and impacts with city staff and/or unions
5. Assist in the preparation, strategize, provide advice, and lead the City in meet and confer sessions with the Unions
6. Consult with the City Manager, Assistant City Manager, and Human Resources Manager
7. Review all materials submitted by the Unions and assist in the preparation on any responses to union materials or questions
8. Provide written documentation of all findings throughout the labor negotiation process to city staff
9. Provide debriefing for the City Manager, Assistant City Manager, Human Resources Manager and City Council (as needed) on the status of contract negotiations.
10. Advise and represent the City in fact finding sessions, as necessary
11. Prepare and write new M.O.U.'s
12. Perform review of current M.O.U.'s to identify inconsistencies with city personnel and administrative rules and policies and any state or federal laws
13. Perform a review of the current M.O.U.'s to determine any vague or ambiguous language and identify areas within the M.O.U. that should be re-evaluated or renegotiated in the interests of the City

Proposers should take note that the above categorization and task identifications are not a prescribed labor negotiation process. It is expected that proposals submitted contain a detailed description of the proposed labor negotiation strategy.

### **RFP SUBMITTAL REQUIREMENTS**

Please prepare your proposal in accordance with the following requirements.

*Proposal:* The proposal shall not exceed a total of 25 double-spaced, 8.5” x 11” pages. Resumes for all key members of the team should be included in the proposal. Five (5) **hard copies (one signed Original) and one electronic copy** of the proposal shall be submitted. The 25-page limit does not count towards or include binding, spacing tabs, cover pages or resumes.

1. *Transmittal Letter:* The proposal shall be transmitted with a cover letter describing the firm's/team's interest, work experience with Police Labor groups, SEIU, and any other pertinent public agency labor union and commitment to the project. The letter shall state that the proposal shall be valid for a 90-day period and should include the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process. The person authorized by the firm/team to negotiate a contract with shall sign the cover letter.
2. *Firm/Team Overview.* Provide a brief firm overview of prime (lead) consultant(s) and sub consultants, as necessary. Overview to include information on staff in firm(s) and the types of services provided. Provide information on where services are anticipated to be performed for this proposal.

*References:* Provide at least three (3) references (company name, contact name, mailing address, email address and phone number) from within the last five (5) years similar to the services being requested and identified within this RFP. Include a brief description of each project associated with the reference, and the role of the respective team member.

*Fee Proposal:* A fee schedule proposal must be included in your proposal, including hourly rates, task/project costs and total project (budget) costs

3. *Professional Services Contract:* Indicate your willingness to accept the terms and conditions of the sample contract, including your ability to comply with insurance requirements, or list those to which you take exception, and, as appropriate, provide proposed alternate wording. Failure to note any exceptions to the terms and conditions in the sample contract will be deemed a waiver of any objection. Note that it is permissible to make substantial changes to sample contract.

### **RFP Submittal Procedure**

The RFP shall be submitted in accordance with the following requirements:

1. Submit one original signed copy, plus five (5) photocopies.
2. The proposal shall be addressed to:

City of Novato  
Administrative Services Department  
Attn: Michael L. Antwine II, Assistant City Manager  
922 Machin Avenue  
Novato, CA 94945

3. The RFP shall be dispatched in order to be received at the above address no later than, **Friday, September 21, 2018 by 5:00 p.m.** Late submittals will not be accepted.
4. The City will notify respondents of its selection, or selection for interview, in writing and will schedule Interviews based on availability.

5. Any questions pertaining to this RFP should be submitted in writing and sent to the following city representatives:

Michael L. Antwine II, Assistant City Manager  
[mantwine@novato.org](mailto:mantwine@novato.org)

Bryan Lopez, Management Analyst  
Administrative Services Department  
[blopez@novato.org](mailto:blopez@novato.org)  
415-899-8923

### **RFP Evaluation and Award Procedure**

The City will evaluate all submittals and select a firm based on the City's needs. Once the top firm has been determined, staff will enter into contract negotiations with that firm. If contract negotiations are not successful or if no one firm contains the qualifications to negotiate with all Units, the remaining firms may be asked to negotiate a contract. Staff will submit a recommendation to the City Council to approve an agreement with said firm. Work related to the scope of works identified within the proposal or agreement may be initiated with a Notice to Proceed (NTP).

### **Evaluation Criteria**

All proposals will be evaluated based on the following items, but not limited.  
The City reserves the right to reject any or all proposals at its discretion:

1. Meeting the minimum RFP requirements
2. Demonstrated Success: Does the proposer demonstrate that it has the appropriate experience and expertise in conducting successful labor negotiations similar to those that will be performed for each Unit of the City?
3. Understanding of the City's goals: Based on any information provided by the City and the firm's independent research.
4. Understands the rules and regulations applicable to public entities in conducting labor negotiations? Is the proposer aware of the limited resources of the City and obligation of the City to minimize costs while at the same time achieving optimum results?
5. Staff: Do the qualifications for key personnel to be assigned to working on the City's negotiations coincide with the City's requirements? Does the firm's organizational structure show sufficient depth for the required work?
6. Familiarity with Locality: Does the firm have familiarity with the City, Marin, Napa or Sonoma County Labor groups and environment; experience negotiating with multiple Unions in the City? Does the firm have specific experience negotiating with Police unions?
7. Specific Management Approach: How does the firm intend to achieve the City's goals and objectives, while staying within the City's budget in conducting a labor negotiation? How will the firm apply its management techniques and resources?

8. Reputation: Are the firm’s references from past clients and associates favorable; and, does the firm show financial and operational stability?

**1. Conflicts of Interest.** The respondent shall disclose any currently known or potential conflicts of interest with the City of Novato. The proposers signature affixed to and dated on the cover letter shall constitute a certification, under penalty of perjury under the laws of the State of California, that the proposer declares that the proposer is not currently and will not during the performance of any services for participate in any other work involving a third party with interests currently in conflict or likely to be in conflict with interests without approval.

**2. Amendments to RFP.** The City of Novato reserves the right to amend or cancel this RFP by addendum before the final submittal due date. Revisions to the RFP shall be posted on the web page at least one full business day prior to the deadline for submittal of responses. It is the responsibility of each proposer to check the CITY web site for any revisions related to this RFP. The proposers shall each confirm in the transmittal letter of its response the receipt of all addenda issued to this RFP.

**3. Non-commitment of.** This RFP does not commit to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for services.

**4. Confidentiality.** Before award of the contract, all responses to this RFP will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract (or if not awarded, after rejection of all responses) all responses will be regarded as public records and will be subject to review by the public. Any language purporting to render all or portions of the responses confidential will be regarded as non-effective and will be disregarded.

**RFP SCHEDULE**

August 21, 2018	RFP Release Date
September 7, 2018	Questions due (via e-mail)
September 14, 2018	City responses to questions e-mailed to all proposers
September 21, 2018	Proposals due
TBD	Respondents notified of possible interview
TBD	Interviews potentially conducted
October 2018	Notice of Intent to Award sent via e-mail and award letter

**Nondiscrimination:** It is the City of Novato’s policy to assure that no person shall, on the grounds of race, color, national origin or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its programs and activities.

**NEGOTIATION SERVICES AGREEMENT BETWEEN**

**THE CITY OF NOVATO**

**AND**

**[FIRM]**

**FOR LABOR NEGOTIATION SERVICES BETWEEN THE CITY OF NOVATO AND LABOR UNIONS**

This Agreement for labor negotiation services is made by and between the City of Novato, a municipal corporation, (“City”) and **[Firm]**, a **[State]** corporation, with offices located at **[Address]**, (“Firm”), (together referred to as the “Parties”) as of **[Date]** (the “Effective Date”).

**Section 1. Scope of Services:** Subject to the terms and conditions set forth in this Agreement, Firm shall provide to City the services described in the Scope of Work attached as **Exhibit A** and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and **Exhibit A**, the Agreement shall prevail.

- 1.1 Standard of Performance:** Firm shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Firm is engaged.
- 1.2 Assignment of Personnel:** Firm shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such person, Firm shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.3 Provided Services:** Firm shall provide the following services as outlined in **Exhibit A**:
  - 1.3.1 [List of Services]**

**Section 2. Term of Agreement:** The term of this Agreement shall begin on the Effective Date and continue through **[Date]**, and Firm shall complete the work described in **Exhibit A** on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 9. The time provided to Firm to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 9.

- 2.1 Time is of the Essence:** Time is of the essence. Firm shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to

timely finish the Scope of Work, to meet the standard of performance provided in Section 2 and to satisfy Firm's obligations hereunder.

**Section 3. COMPENSATION:** City hereby agrees to pay Firm a sum not to exceed [**Spell out Cost**], (**\$Cost**) notwithstanding any contrary indications that may be contained in Firm's proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Firm's proposal, attached as **Exhibit A**, regarding the amount of compensation, the Agreement shall prevail. City shall pay Firm for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Firm for services rendered pursuant to this Agreement. Firm shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Firm shall not bill City for duplicate services performed by more than one person.

Firm and City acknowledge and agree that compensation paid by City to Firm under this Agreement is based upon Firm's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Firm. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Firm and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 3.1 Invoices:** Firm shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date.
- 3.2 Monthly Payment:** City Shall make payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 45 days from the receipt of an invoice that complies with all the requirements above to pay Firm.
- 3.3 Total Payment:** City shall pay for the services to be rendered by Firm pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Firm in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement. Unless otherwise stipulated in a writing by both parties.  
  
In no event shall Firm submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 3.4 Hourly Fees:** Unless the services provided are for a lump sum or flat fee, fees for work performed by Firm on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as **Exhibit B**. In the event of a conflict in or inconsistency between the terms of this Agreement and **Exhibit B**, the Agreement shall prevail.
- 3.5 Reimbursable Expenses:** There are no reimbursable expenses.

- 3.6 Payment of Taxes:** Firm is solely responsible for the payment of employment taxes incurred under this Agreement and any similar Federal or State taxes.
- 3.7 Payment upon Termination:** In the event that the City or Firm terminates this Agreement pursuant to Section 9, the City shall compensate the Firm for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Firm shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 3.8 Authorization to Perform Services:** The Firm is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City.
- 3.9 Business License:** The Firm is not authorized to perform services or incur costs whatsoever under the terms of this Agreement until Firm applies for and has been issued a business license from the City pursuant to Chapter 8.1 of the Novato Municipal Code.

**Section 4. FACILITIES AND EQUIPMENT:** Except as set forth herein, Firm shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

City shall make available at its convenience city records and documents as may be reasonably necessary for Firm's use while consulting with City employees and reviewing records and the information in possession of the City. In no event shall City be obligated to furnish any facility or equipment that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 5. INSURANCE REQUIREMENTS:** Before beginning any work under this Agreement, Firm, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Firm and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Firm shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Firm shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Firm's bid. Firm shall not allow any subcontractor to commence work on any subcontract until Firm has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 5.1 Required Coverage:** Firm shall maintain all required insurance listed herein for the duration of this Agreement.

<b>COVERAGE</b>	<b>TYPE OF INSURANCE</b>	<b>MINIMUM LIMITS</b>
A	<b>Commercial/General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence; Bodily Injury and Property Damage \$2,000,000 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis
B	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting coverage.
C	<b>Workers’ Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Firm may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.
D	<b>Professional Liability/Errors &amp; Omissions</b> Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$150,000 per claim

**5.2 Additional Requirements:** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a) All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.
- b) All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers’ Compensation and Employers Liability, shall be

endorsed to name as additional insured: City of Novato, its City Council, and all City officers, agents, employees, volunteers and representatives.

- c) For any claims related to this Agreement or the work hereunder, the Firm's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Firm's insurance and shall not contribute with it.
- d) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- e) Certificates of Insurance: Before commencing operations under this Agreement, Firm shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to City, evidencing that all required insurance coverage is in effect. The City reserves the rights to require the Firm to provide complete, certified copies of all required insurance policies.
- f) Subcontractors: Firm shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**5.3 All Policies Requirements:**

- a) Waiver of Subrogation: Firm hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of payment of any loss. Firm agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Firm, its employees, agents, and subcontractors.

**5.4 Remedies**: In addition to any other remedies City may have if Firm fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Firm's breach:

- i. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- ii. Order Firm to stop work under this Agreement or withhold any payment that becomes due to Firm hereunder, or both stop work and withhold any payment, until Firm demonstrates compliance with the requirements hereof; and/or
- iii. Terminate this Agreement.

**Section 6. INDEMNIFICATION AND FIRM'S RESPONSIBILITIES:** Firm shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Firm's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Firm's obligation to defend and indemnify shall not be excused because of the Firm's inability to evaluate Liability or because the Firm evaluates Liability and determines that the Firm is not liable to the claimant. The Firm must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Firm fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Firm under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Firm accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Firm, the Firm waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Firm to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Firm or any employee, agent or subcontractor of Firm providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Firm shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Firm or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

**Section 7. STATUS OF FIRM:**

- 7.1 Independent Contractor:** At all times during the term of this Agreement, Firm shall be an independent contractor and shall not be an employee of City. City shall have the right to control Firm only insofar as the results of Firm's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.2; however, otherwise City shall not have the right to control the means by which Firm accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, State, or Federal policy, rule, regulation, law, or ordinance to the contrary, Firm and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 7.2 **Firm NOT an Agent:** Except as City may specify in writing and in the performance of the duties or scope of work identified within this agreement, the Firm shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Firm shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

#### **Section 8. LEGAL REQUIREMENTS:**

- 8.1 **Governing Law:** The laws of the State of California shall govern this Agreement.
- 8.2 **Compliance with Applicable Laws:** Firm and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 8.3 **Other Governmental Regulations:** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Firm and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 8.4 **Licenses and Permits:** Firm represents and warrants to City that Firm and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Firm represents and warrants to City that Firm and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Firm and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 8.5 **Nondiscrimination and Equal Opportunity:** Firm shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Firm under this Agreement. Firm shall comply with all applicable Federal, State, and local laws, policies, rules and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Firm thereby.

Firm shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator of this Agreement.

#### **Section 9. TERMINATION AND MODIFICATION:**

- 9.1 **Termination:** City may cancel this Agreement at any time and without cause upon written notification to Firm. Firm may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Firm shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Firm delivering to City any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Firm or prepared by or for Firm or the City in connection with this Agreement.

- 9.2 Extension:** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Section 2. Any such extension shall require a written amendment to this Agreement, as provided for herein.
- 9.3 Amendments:** The parties may amend this Agreement only by a writing signed by all parties.
- 9.4 Assignment and Subcontracting:** City and Firm recognize and agree that this Agreement contemplates personal performance by Firm and is based upon a determination of Firm's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Firm. Firm may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Firm shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 9.5 Survival:** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Firm shall survive the termination of the Agreement.
- 9.6 Options upon Breach by Firm:** If Firm materially breaches any of the terms of this Agreement, City's remedies shall include, but not limited to, the following:
- 9.6.1** Immediately terminate the Agreement;
- 9.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Firm pursuant to this Agreement;

## **Section 10. KEEPING AND STATUS OF RECORDS:**

- 10.1 Records Created as Part of Firm's Performance:** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Firm prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Firm hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Firm agree that, until final approval by City, all data, plans, specifications, reports and other documents are

confidential and will not be released to third parties without prior written consent of both parties.

- 10.2 Firm's Books and Records:** Firm shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Firm to this Agreement.

Any records or documents of Section 10.2 of this Agreement requires Firm to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours upon oral or written request of the City.

### **Section 11. MISCELLANEOUS PROVISIONS:**

- 11.1 Attorneys' Fees:** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to a reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.2 Dispute Resolution:** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, City and Firm agree to resolve the dispute in accordance based on a written mutually agreed upon process and procedure
- 11.3 Severability:** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.4 No Implied Waiver of Breach:** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.5 Conflict of Interest:** Firm may serve other clients, but none whose business, regardless of location, would place Firm in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq.

Firm shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq. Firm hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Firm was an employee, agent, appointee, or official of the City in the previous twelve months, Firm warrants that it did not participate in any manner in the forming of this Agreement. Firm understands that, if this Agreement is made in violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**11.6 Solicitation:** Firm agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**11.7 Contract Administration:** This agreement shall be administered by the Regan M. Candelario, City Manager and his designee, Michael L. Antwine II, Assistant City Manager (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator.

**11.8 Notices:** Any written notice to Firm shall be sent to:

**[Firm Name]**  
**[Firm Address]**

Any written notice to City shall be sent to:

**Michael L. Antwine II**  
**Assistant City Manager**  
**City of Novato**  
**922 Machin Avenue**  
**Novato, CA 94945**

[mantwine@novato.org](mailto:mantwine@novato.org)

**11.9 Integration:** This Agreement, including the scope of work attached hereto and incorporated herein as **Exhibits A and B** represents the entire and integrated agreement between City and Firm and supersedes all prior negotiations, representations, or agreements, either written or oral.

<b><u>Exhibit A</u></b>	Scope of Services
<b><u>Exhibit B</u></b>	Payment Schedule

**11.10 Counterparts:** This agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

**CITY OF NOVATO:**

**[Firm]:**

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
[Authorized Signer]

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

\_\_\_\_\_  
[CITY ATTORNEY]

**EXHIBIT A**

**SCOPE OF WORK**

The Scope of Work was included in the proposal submitted by Firm and is shown in the pages that follow.

**EXHIBIT B**  
**PAYMENT SCHEDULE**

The Payment Schedule was included in the proposal submitted by Firm and is shown in the pages that follow.