

# REQUEST FOR PROPOSALS

FOR  
CONSULTING SERVICES FOR  
PARKS MASTER PLAN

Issued: October 19, 2022



**CITY OF NOVATO**  
CALIFORNIA

**PROPOSALS DUE:  
November 21, 2022, by 5:00PM**

922 MACHIN AVENUE, NOVATO, CA 94945 | PHONE: 415.899.8900 | [NOVATO.ORG](http://NOVATO.ORG)

Mayor Eric Lucan | Mayor Pro Tem Susan Wernick | Councilmembers Denise Athas ▪ Pat Eklund ▪ Mark Milberg  
City Manager | Adam McGill

## **INTRODUCTION**

The City of Novato (City) hereby issues a Request for Proposals (Proposal) for a Consultant or team of professionals (Consultant or Team) to provide professional services to develop a comprehensive Parks Master Plan. This plan will provide a foundation for the future development and maintenance of parks, facilities, and amenities.

As outlined in General Plan 2035, adopted in October 2020, the City desires to update the Parks Master Plan to coincide with the evolution, future development, and strategic goals of the City as a whole. Specifically, the Parks Master Plan will analyze financial implementation strategies to improve undeveloped parkland, maintain or enhance existing park facilities and amenities, and acquire land for new neighborhood parks. In considering new park facilities and improvements, an evaluation of parking and transit access and required screening of lighting and noise protection for nearby residents should also be considered.

Additionally, the Parks Master Plan should identify unmet recreational needs, provide a strategy for development and maintenance of pocket and neighborhood parks, examine methods to improve parks to maximize use, reduce maintenance costs, improve access and opportunities for recreation for all demographics, abilities, and socioeconomic status, and seek opportunities for collaboration with other public and private entities.

After significant collaboration between the Consultant, City staff, Parks & Recreation Master Plan Steering Committee, and the community, the Parks Master Plan will serve as a valuable strategic guide and create a roadmap for both current and future parks and recreation development.

## **BACKGROUND**

The City of Novato was incorporated in 1960 and is the northernmost City in Marin County, California, located approximately 29 miles north of San Francisco. Novato, which covers 28 square miles, has a population of nearly 53,000—a density about one-half of San Rafael, and nearly one-third of Petaluma or Vallejo. Novato has a rural atmosphere largely because of its low population density and the high amount of open space and parks in and near the City.

The City of Novato manages and operates 28 parks totaling approximately 316.5 acres, or approximately 5.8 acres per one thousand residents. Parks in Novato feature, among other amenities, hiking trails, 14 playgrounds, playing fields, outdoor courts, an amphitheater, a skate park, a dog park, a community swimming pool, and picnic areas. City parks are listed in Table LW-1 and shown in Figure LW-1. In addition to facilities formally recognized as parks, Novato residents have access to some of Novato Unified School District's school playgrounds and playing fields, which are available for public use outside of school hours through a reciprocal use agreement.

The scope of this Master Plan will include both land and park facilities within the City's boundaries, as well as area(s) in the City's Sphere of Influence as defined by the City's General Plan.

Table LW-1 CITY PARKS

\*Properties owned by other entities but maintained by the City of Novato.

MAP ID	PARK	ACRES	AMENITIES
1	Arroyo Avichi Park	7.2	Barbeques, playground, tot lot, water spray feature
2	Bahia Mini Parks (6)	1.8	Playground, lawn area, picnic tables, benches
3	Creekside Park	7.9	Benches
4	Downtown Recreation Center Pocket Park	0.3	
5	Hamilton Amphitheater Park	4.1	Amphitheater, restrooms, tot lot, open lawn, gazebo
6	Hamilton Firehouse Park	0.9	Hamilton Field History Museum and picnic tables
7	Hill Recreation Area	12.4	Ballfields, multi-use turf area, track
8	Hillside Park	1.2	Playground, tot lot, restrooms
9	Indian Valley Campus of College of Marin	8.1	Lighted ballfields and bleachers, picnic area and restrooms
10	Josef Hoog Park	9.8	Group barbeque area, multi-use turf area, basketball court, playground, tot lot, restrooms, walking path
11	Joyce Street Tot Lot	0.1	Tot lot, picnic area
12	Lee Gerner Park	2.0	Benches, Creekside seating
13	Lynwood Hill Park	11.6	Open access, no amenities
14	Marin Highlands Park	3.8	Playground, picnic tables, and open lawn
15	Marion Recreation Area	2.0	Multi-use turf area, ballfields, lawn area
16	Miwok Park	37.9	Trails, Marin Museum of the American Indian, group BBQ areas, bocce ball courts, children's gazebo, horseshoe pits, restrooms, open lawn, playgrounds, creek access
17	Novato City Green	0.1	Open lawn and seating
18	Novato Skate Park	1.3	Skate viewing area, lawn, picnic and game tables
19	O'Hair Park	98.3	Trails, 2.8-acre Dogbone Meadow off-leash dog park, equestrian center, creek access
20	Olive Tot Lot	0.1	Barbeque, tot lot, chess table
21	Pansy Tong Lo Park	0.8	Pathway with no amenities
22	Pioneer Park	8.9	Group barbeque area, multi-use turf area, playground, picnic tables, gazebo, lighted tennis courts, paved walking path, restrooms, tot lot, creek access
23	Reservoir Hill Vista Trail	32	ADA accessible trail, parking, benches
24	Scottsdale Pond/Marsh	51.9	Fishing pier, gazebo, Evalyn Kelly Interpretive Area, model sailboat sailing, seating
25	Slade Park*	3.0	Barbeque area, multi-use turf area, playground
26	South Hamilton Park	6.9	Ballfield, multiuse turf area, playground, tot lot, SF Bay trailhead, parking, picnic tables and barbeque, basketball hoop
27	Stafford Grove Park	0.3	Playground, gazebo
28	Thigpen Sports Courts*	1.8	Lighted basketball courts, roller hockey courts, tennis courts, parking

## **PROJECT SCOPE**

The scope of work is intended to define minimum requirements. Consultants are encouraged to present innovative concepts to produce a comprehensive plan for improvement of Novato's parks and outdoor facilities. The selected Consultant will be expected to perform, but shall not be limited to, all of the following:

### **Task 1 – Inventory and Assessment of Existing Facilities**

- Consultant will conduct an inventory and assessment of all existing parks, outdoor facilities, trails, and park amenities within the City. At a minimum, the assessment must include analysis of the matters identified below.
- Consultant shall review and, to the extent persuasive, accurate and relevant, incorporate findings from the City's 2013 Facilities Condition Assessment and Maintenance Analysis created by Faithful+Gould, Inc., which analyzes parks, playgrounds, and amenities within the recreation areas.
- The report should consider the current usage and condition of each facility and include a prioritization of recommendations for maintenance and renovation of parks and recreation facilities.
- The analysis should consider not only the capacity of each amenity found within the system (playgrounds, ball fields, courts, trails, natural areas, special facilities, etc.) but also address functionality, accessibility, condition, comfort, degree of use and convenience of same.
- The Team assessing the facilities shall include a Certified Access Specialist (CASP) to review and include findings as to whether the facilities are accessible based on current ADA standards. Consultant shall review and incorporate, to the extent persuasive, accurate and relevant, findings from the City's 2015 ADA Self-Evaluation and Transition Plan as it relates to parks, outdoor facilities and amenities.
- Identify how individuals access recreation and leisure services in Novato.
- The analysis will also include identification of the best possible providers of maintenance services and make recommendations for minimizing duplication of facilities and enhancing possibilities for partnerships where appropriate.
- The Consultant will also identify and provide an analysis of emerging parks and recreation trends that the Consultant relies on in developing the Master Plan.

### **Task 2 – Community Interests and Needs Survey**

- The Consultant shall develop a city-wide community needs assessment survey to identify community interests, needs, issues, and satisfaction related to parks, outdoor facilities, and amenities.
- The survey should accurately represent a sampling of the community population, with a return rate sufficient to provide statistically valid results.
- This survey shall be used as a baseline to determine needs, desires, and willingness to pay for said facilities and programs.
- The survey shall be available to residents, both in English and Spanish, electronically on the City's website and in print form. The Consultant will be responsible for providing Spanish translation.

### **Task 3 – Public Engagement**

Consultant shall identify, describe, and implement a comprehensive strategy for citizen involvement in the development of this Master Plan. Community outreach should ensure that a positive, open, inclusive, and proactive public participation process is achieved that includes a diverse demographic within the City. The Consultant's public engagement strategy shall include a variety of outreach tools such as: Facebook, Instagram, Nextdoor, Constant Contact and the City's website. The Consultant will work directly with City Staff to implement outreach strategies through City channels. The Consultant shall prepare an outline of

the Consultant's outreach strategy as part of the proposal that should include, but is not limited to:

- Conducting various public community meetings, focus groups and individual stakeholder interviews using virtual means if necessary.
- Meet monthly with steering group comprised of City Staff and as needed members of the Recreation, Cultural & Community Services (RCCS) Commission's Master Plan Ad Hoc Committee to discuss progress and receive feedback.
- Solicit the opinions and perceived needs of parks and recreation facilities user groups through the implementation of additional questionnaires or surveys.
- Study session to review Draft Master Plan with RCCS Commission.
- Provide well organized and directed activities, techniques, and formats.
- Provide written reports/summaries of the results of these public meetings.

#### **Task 4 – Action Plan, Prioritization and Recommendations**

- Collect and analyze information on park use, needs, improvements, operations, maintenance, land use trends and make recommendations.
- Identify areas of service shortfalls and projected impact of future trends.
- Articulate themes identified through the data-gathering process into goals and strategies.
- Develop recommendations for operations, staffing, maintenance, renovations, programming, and funding needs in order of recommended priority.
- Project the anticipated costs for park maintenance and administration of existing facilities for the future. Include recommended alternatives to current maintenance models.
- Identify opportunities for available funding alternatives to support recommendations.
- Develop an action plan which includes strategies, constraints, priorities, staffing and maintenance needs, probable costs, and an analysis of budget support/funding mechanisms for the short term (3 years), mid-term (5-7 years) and long term (10+ years) for the park system, open space, outdoor facilities, and amenities.
- Examine opportunities for partnerships with City, community organizations, school districts, sports groups, etc.
- Create a ranking system to help identify the community's top priorities for renovation/development of existing parks and outdoor recreation facilities based on community input and funding.

#### **Task 5 – Development of Final Plans and Supporting Materials**

- The Master Plan must include a recommended action plan that outlines community identified goals, recommendations, plans, objectives, and policy statements that articulate a clear vision or "road map," and model for the future.
- The Master Plan must include a summary of existing conditions, inventories, and level of service analysis.
- The Master Plan must include charts, graphs, maps, and other data as needed to support the plan and its presentation to the appropriate audiences.
- The Master Plan must include a financial plan.
- Prepare a Draft Master Plan for review by the City.
- The Consultant must develop a color version of the draft Master Plan document consisting of an electronic copy in Word and PDF formats.
- The City shall retain ownership of all data gathered.

#### **Task 6 – Project Management**

##### **The Consultant:**

- Shall be responsible for providing all contract management and quality control of its own and its subconsultants' work product.
- Conduct a project kick-off meeting with City Staff to confirm project requirements and clarify roles, responsibilities, and expectations.



- Develop a plan and project schedule.
- Provide progress emails weekly and bi-weekly phone call check-ins.
- Attend, lead, and facilitate community meetings, as necessary.
- Attend meetings with the Recreation, Cultural & Community Services Commission as needed.
- May be asked to attend up to two (2) meetings with the City Council to discuss the Master Plan and receive direction.
- Develop and manage the tools necessary to collect community input and data.

**The City:**

- Shall provide a City Project Manager who will be the City's Parks, Recreation & Community Services Director.
- Electronic access to documents that pertain to or influence the development of the Master Plan.
- Access to all applicable City records as determined by the City Project Manager.
- Assistance with meetings as related to logistical arrangements and requirements. The City shall be responsible for the arrangements and noticing of all public meetings associated with public input. The Consultant shall review all prepared information for public meetings with the City Project Manager at least four days prior to the scheduled meeting.
- Staff support to assist in the facilitation of all public meetings.

**PROPOSAL**

The Proposal shall be concise, well organized, and demonstrate an understanding of the Scope of Services as outlined in this RFP. The City of Novato has budgeted up to \$250,000 for the development of the Parks Master Plan.

Proposals shall include:

- Cover letter signed by the person authorized to execute the contract for proposed services with the City on behalf of the Proposal team.
- Firm profile, including name, address, telephone number, and email address of the firm's point of contact, and the company website.
- An organization chart setting forth the project manager and the staff. Include experience for each individual expected to perform responsible portions of the work. Do not submit resumes for individuals who do not have a high probability of actually leading or working on the project. The City reserves the right to verify each key person's experience and/or education and call upon references. Experience with municipalities is required.
- The identification of each proposed subcontractor, if any, its tasks, schedule, costs, etc., shall be included. The form and content of all work product proposed to be provided by subcontractors shall be described in detail. Subcontracts must also meet all requirements requested of the selected Consultant and be approved by the City.
- A minimum of three (3) park and recreation master plan references, including the reference's names, company/agency, phone numbers, and e-mail address, plus a description of the type of work you performed for them, and website where final referenced park and recreation master plan examples can be viewed.
- A detailed work plan describing your approach to designing, managing, and coordinating this project including level of effort. The description should, at a minimum, include all tasks listed in accordance with the section entitled "Project Scope" of this RFP. In addition, include any steps/tasks not included in the "Project Scope" that the Consultant feels should have been included and why their omission would materially affect the quality of the project.
- An outline of the outreach strategy plan outlined in Task 3 of the "Project Scope".
- Submit a statement of acknowledgment signed by an individual authorized to bind the proposing entity to a signed agreement, stating that the firm has read and acknowledges that it can comply

with all terms and conditions described in the RFP. Attach copies of business licenses, professional certifications and affiliations, or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.

- A project schedule including at minimum, those tasks outlined in the section entitled “Project Scope” of this notice. Schedule should include logical breakdown of project tasks and completion deadlines. It should be designed to provide time for staff input. The Consultant should specify all scheduled meetings with staff. The schedule shall indicate all milestones, the critical path necessary for the project, and the anticipated completion timeframe upon notice to proceed.
- Consultants are requested to submit Proposal Costs in an itemized format to permit item by item cost identification. The costs shall be presented in a format that allows identification of total costs for the Parks Master Plan. The cost itemization must contain all cost assumptions including the number of hours for each team member, hourly billing rates, estimated costs of other items (travel, printing, etc.), subtotal of fees by task and grand total (labor and direct costs) By to complete the scope of work. If costs are based on a fixed number of public meetings, costs of additional meetings must be itemized. The cost for printing and binding of the Master Plan hard copies shall be separately identified but included in the total. This item shall be submitted within the proposal document.

The Consultant shall be aware of the following:

- All Proposals shall be submitted according to the specifications set forth in the RFP. Failure to adhere to these specifications may be cause for rejection.
- Once submitted, Proposals, including the composition of the consulting staff, shall not be changed without prior written consent.
- The City reserves the right to revise the RFP prior to the indicated due date. The City may consider extending the due date for submittal of RFPs due to significant revisions to the Scope of Services or other reasons.
- All services provided by the Consultant shall be performed in strict accordance with the City of Novato regulations and ordinances. Attached as Attachment B is the summary of the City’s insurance requirements that the selected Consultant shall be required to comply with and attached as Attachment C is the Consultant Agreement that the selected Consultant shall be required to execute. The selected Consultant will also be required to hold a business license with the City of Novato. The ability to comply with the terms of the attached agreement is a requirement for the selection of the Consultant, in particular, the ability to provide the required insurance. Your submittal of a proposal shall constitute your representation that you agree with each and every term and condition of the attached agreement. The City shall maintain ownership of all data gathered by the Consultant in the performance of the Scope of Service.

#### **SELECTION PROCESS AND EVALUATION CRITERIA**

Proposals will be evaluated based on the following criteria by a Selection Committee of City staff and/or community representatives. As part of the evaluation process, the Consultant may be required to attend one or more interviews with City staff and/or community representatives.

Ranking of the Proposals will be weighted based on the following point system (100 points maximum):

- Inclusion of all required items and completeness of the Proposal. (10 points)
- Understanding of the work to be done including work plan. (15 points)
- Demonstrated experience with similar project(s) involving municipalities and other public agencies. (40 points)
- Qualified and experienced personnel on the project team. (20 points)
- Public outreach strategy plan and demonstrated ability to lead, facilitate, and coordinate projects involving extensive outreach. (15 points)

The City will notify each Consultant regarding the outcome of the Proposal selection process. The City may reject any or all of the Proposals if the City deems such action to be in the public interest.

While cost is a key consideration, the City reserves the right to choose the proposal evaluated to be the most responsive to the needs of the City, which may not be based on price. The Selection Committee may choose to interview the top candidates.

After evaluating the proposals and discussing them further with the finalists, the City of Novato reserves the right to further negotiate the proposed work and/or method and amount of compensation. The respondent must clearly state the period of time for which the proposal will be valid. This period must not be less than one hundred eighty (180) days from the date of submittal. The City expects to award the contract in the month of January 2023.

### **CONSULTANT NOMINATING AND SELECTION PROCESS**

- A Consultant Selection Committee comprised of City Staff will be established for this project. Each member of the Committee will evaluate each submitted Proposal.
- Interviews may be scheduled with the top firm or firms as determined through the review and rating of proposals. Interviews may be waived if, in the opinion of the committee, a clearly superior submittal has been made.
- After the interviews (if needed) are completed, references and industry sources may be contacted, and previous projects and current commitments investigated.
- Project costs will be reviewed after the proposals have been ranked. Of the proposals ranked acceptable by the City, the costs associated with the top ranked Consultant Team will be evaluated. If the committee and the top ranked Consultant are unable to reach agreement on the costs and charges the Consultant has proposed, then the committee reserves the right to evaluate the second ranked proposal and may recommend awarding the contract to the second ranked Consultant. If the Committee and the second ranked Consultant are unable to reach Agreement on the costs and charges the second ranked Consultant has proposed, then the Committee reserves the right to evaluate and recommend selecting the third ranked Consultant, and so on.
- Once the Committee and selected Consultant reach agreement on the costs and charges to be paid by the City to the Consultant and the Consultant has agreed to execute the Agreement, the Parks, Recreation & Community Services Director will recommend to the City Council the approval of the agreement. Final authority to approve the agreement rests with the City Council.

### **PRE-PROPOSAL QUESTIONS**

Questions regarding this Request for Proposals should be submitted in writing to Parks, Recreation & Community Services Director, Katie Gauntlett at [kgauntlett@novato.org](mailto:kgauntlett@novato.org). All such questions and the City's responses thereto shall be posted on the City's website which can be accessed at the following: [novato.org/parksplan](http://novato.org/parksplan).

The City will not reimburse the RFP respondents for any costs incurred in the preparation and submission of proposals nor in preparation of or attendance at interviews or other pre-award meetings. This RFP does not obligate the City to award a contract or accept or contract for any expressed or implied services. The City reserves the right to reject or accept any and all proposals and to waive informalities and minor irregularities in any proposal reviewed. The City reserves the right to require any Consultant submitting a proposal to clarify its proposal or to supply additional material deemed necessary to assist in the selection of a Consultant, and to modify or alter any of the requirements herein. The City reserves the right to reject all proposals and decline to award any contract for the preparation of the Parks Master Plan. In the event that the



proposal guidelines change materially, all respondents who submit a proposal will be given an opportunity to modify their proposal in the specific areas that are impacted. Further, the City may reject any proposal which does not conform to the instructions contained within this RFP.

**PROPOSAL SUBMITTAL**

The proposal should be sent electronically to [kgauntlett@novato.org](mailto:kgauntlett@novato.org) or mailed to:

Katie Gauntlett  
Parks, Recreation & Community Services Director  
City of Novato  
922 Machin Avenue  
Novato, CA 94945

Proposals must be received no later than November 21, 2022 at 5:00pm.

The City reserves the right to reject all proposals if deemed unsuitable. Late or incomplete submittals will not be considered, and the City reserves the right to determine the completeness of proposals. The City is not responsible for the costs of preparing or delivering the proposals. Proposal costs shall be valid for no less than 180 days.

**SELECTION SCHEDULE**

The City anticipates the following tentative schedule will be followed to evaluate submittals and select a Consultant to negotiate a contract.

Release of the Request for Proposals: October 19, 2022  
Deadline for Written Questions: November 9, 2022 by 5:00pm  
Proposals must be received no later than November 21, 2022 at 5:00pm.  
Interviews (as required): Week of December 5, 2022  
Applicant Notified: Week of December 12, 2022  
City Council Action: January 2023

**SPECIAL CONDITIONS**

- RFP as a Public Record  
All Proposals submitted in response to this RFP become the property of the City and thus become public records and, as such, may be subject to public review and copying.
- Right to Cancel  
The City reserves the right to cancel or change, for any or no reason, in part or in its entirety, this RFP, including but not limited to: selection schedule, submittal date, and submittal requirements.
- Additional Information  
The City reserves the right to request additional information and/or clarification from any or all respondents to this RFP.

Thank you for your interest in contracting opportunities with the City of Novato.

Respectfully,

City of Novato

Attachment: Copy of City of Novato’s standard Professional Services Agreement

Agreement No

Project Title:

Fiscal Year:

## PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES

(City of Novato / **[Company or Individual]**)

### 1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Novato, a California municipal corporation (“City”), and **[enter Company or natural person]**, a **[enter as appropriate a California Limited Liability Company, a CA Corporation, a CA Partnership, A CA Limited Partnership, etc.]** (“Consultant”) (collectively, “parties”).

### 2. RECITALS

- 2.1. City has determined that it requires the following professional services from a consultant: **[enter description of consultant’s services]**
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under California Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 2.4. CITY has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by City shall not operate as a waiver or release. Consultant represents and warrants to City that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Consultant to practice its profession, and (b) it shall, at its sole cost, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall indemnify and hold harmless the City from and against any and all claims or expenses caused or occasioned directly or indirectly by Consultant’s failure to so perform.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

### 3. DEFINITIONS

- 3.1. “Scope of Services”: Such professional services as are set forth in Consultant’s [enter consultant’s proposal date] proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. “Agreement Administrator”: The Agreement Administrator for this project is [Name and title]. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant.
- 3.3. “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the fee schedule attached hereto as Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work] and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.4. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is [redacted] Dollars (\$ [redacted]).
- 3.5. “Commencement Date”: [date].
- 3.6. “Termination Date”: [date].

### 4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 16 (“Termination”) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

### 5. CONSULTANT’S DUTIES

- 5.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator. All changes and/or extra work shall be performed and paid for in accordance with the following:
- 5.2.1. Only the City [enter department head] or City Council may authorize extra and/or changed work. Consultant expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Consultant to secure the Council's or City [enter department head]'s authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Consultant thereafter shall be entitled to no compensation whatsoever for performance of such work.
  - 5.2.2. If the Consultant is of the opinion that any work s/he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, s/he shall promptly notify the City of the fact. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work, it shall provide extra compensation to the Consultant on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the City and the Consultant. Such Supplemental Agreement shall be executed by the Consultant and be approved by the City Manager or City [enter department head].
  - 5.2.3. In the event City determines that such work does not constitute extra work, Consultant shall not be paid extra compensation above that provided herein and if such determination is made by City staff, said determination may be appealed to the City Council as long as a written appeal is submitted to the City Manager within five (5) days after the staff's determination is received by the Consultant. Said written appeal shall include a description of each and every ground upon which Consultant challenges the staff's determination. The City Manager's or City [enter department head]'s decision shall be final.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.
- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.

- 5.5. **Professional Standards.** Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict-of-interest provisions of California Government Code Section 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. **Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.7. **Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **[Name of Project Manager]** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.8. **Prevailing Wages.** This Agreement is subject to the Prevailing Wage Laws, as more fully set forth in Section 8 (Labor Code), for all work performed under this Agreement for which the payment of prevailing wages is required under state law. In particular, Consultant acknowledges that prevailing wage determinations are available for work performed under this Agreement.
- 5.9. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.10. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary, if any, for Consultant's performance of this Agreement including, but not limited to, professional licenses and permits.
- 5.11. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subconsultant. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.

- 5.12. **Inspection Services.** In the event Consultant will perform inspection services, City or authorized representatives of the City shall have the right to inspect the work of such services whenever such representatives may deem such inspection to be desirable or necessary. Inspections by the City do not in any way relieve or minimize the responsibility of Consultant to conduct the inspections Consultant has expressly agreed to perform pursuant to this agreement. Consultant shall be solely liable for said inspections performed by Consultant. Consultant shall certify in writing to the City as to the completeness and acceptability of each inspection of improvement or construction which Consultant agrees to inspect hereunder.
- 5.13. **Records.** Consultant 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 City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

## 6. SUBCONTRACTING

- 6.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. **Identification in Fee Schedule.** All subconsultant shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work]. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.
- 6.4. **Compensation for Subconsultants.** City shall pay Consultant for work performed by its subconsultants, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work]. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement. City

shall not be liable for any payment, compensation, or federal and state taxes for any subconsultants.

## 7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement and Consultant agrees to accept payment in accordance with the Approved Fee Schedule, **Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work]** in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. Invoice detail requirements are more particularly described in Exhibit A.
- 7.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

## 8. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects including, but not limited to,

the design and preconstruction phases of a covered public works project. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

## 9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, including without limitation copies thereof, digital originals, and digital copies (“written products” herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

## 10. RELATIONSHIP OF PARTIES

- 10.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision or course of action, and Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the City or that it or they have the power to bind or commit the City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.
- 10.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation, and other applicable federal and state taxes.
- 10.4. **Indemnification of CalPERS Determination.** In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees,

agents, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## 11. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, “Consultant” shall include Consultant, its officers, employees, servants, agents, or subconsultants, or anyone directly or indirectly employed by either Consultant or its subconsultants, in the performance of this Agreement. “City” shall include City, its officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Consultant’s alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement.
- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person., Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the negligence or willful misconduct of the City. Subconsultant’s obligation to defend any indemnified parties from claims covered by professional liability shall mean subconsultant’s legal obligation is to reimburse the indemnified parties for their reasonable defense costs to the extent caused by subconsultant’s negligence.
- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys’ fees for counsel of City’s choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys’ fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not limited by the provisions of any workers’ compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 **Indemnification by Subconsultants.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subconsultant or any other person or entity involved in the performance of this Agreement on Consultant’s behalf.

11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant’s indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

**12. INSURANCE**

12.1. **Insurance Required.** Consultant shall maintain insurance as described in this Section and shall require all of its subconsultants, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

12.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant’s obligation to provide them. Consultant shall file with City:

- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: [insert project name]
- Documentation of Best’s rating acceptable to the City.
- Original endorsements effecting coverage for all policies required by this Agreement.
- Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

12.3. **Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

Professional Liability Insurance:	\$1,000,000 per occurrence \$2,000,000 aggregate
General Liability:	\$1,000,000 per occurrence \$2,000,000 aggregate \$2,000,000 Products Comp/Op Aggregate \$1,000,000 Personal & Advertising Injury \$ 50,000 Fire Damage (any one fire) \$ 5,000 Medical Expense (any 1 person)
Workers' Compensation:	\$1,000,000 EL Each Accident \$1,000,000 EL Disease - Policy Limit \$1,000,000 EL Disease - Each Employee
Automobile Liability	\$1,000,000 Any vehicle, combined single limit

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured

- 12.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than Insurance Services Office (ISO) Form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- 12.5. **Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 12.6. **Automobile Liability Insurance.** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9).
- 12.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement. In the event Consultant's policy is a "claims made" policy only covering those claims made during the policy period, then Consultant agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.
- 12.8. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

- 12.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of the City of Novato must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions and Worker's Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant's insurance at least as broad as ISO Form CG 20 10.
- 12.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this Section, shall constitute a material breach of this Agreement.
- 12.11. **Notices.** Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Novato, Attn: [insert department or individual], 922 Machin Avenue, Novato, CA 94945
- 12.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.13. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to

provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.

City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.

12.16. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

### 13. MUTUAL COOPERATION

13.1. **City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

13.2. **Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

### 14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing); or (iii) the day of delivery if emailed to the email address listed below and simultaneously deposited in the U.S. mail, postage prepaid, to the address(es) listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

[Name]  
City of Novato  
[Department/Division]  
922 Machin Avenue  
Novato, CA 94945  
Telephone: [Insert]  
Facsimile: [Insert]  
Email: [Insert]

If to Consultant:

[Name]  
[Address]  
[Address]  
Telephone: [Insert]  
Facsimile: [Insert]  
Email: [Insert]

With courtesy copy to:

Jeffrey A. Walter, City Attorney  
Colantuono, Highsmith & Whatley, PC  
670 W. Napa Street, Suite F  
Sonoma, CA 95476  
Telephone: (707) 986-8091  
Facsimile: (707) 509-7295  
Email: jwalter@chwlaw.us

## 15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 5.11 (Records), Section 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnification), Section 12.8 (Claims-Made Policies), Section 13.2 (Consultant Cooperation in Defense of Claims), and Section 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

## 16. TERMINATION

16.1. **City Termination.** The City may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Consultant of the services required. Notice of Termination of this Agreement shall be given in writing to Consultant and shall be sufficient and complete when same is emailed to Consultant and simultaneously deposited in the United States mail postage prepaid and certified, addressed as set forth in Section 14 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by Consultant. If City should terminate this Agreement, the Consultant shall be compensated for all work satisfactorily performed prior to time of receipt of termination notice, and shall be compensated for materials ordered by the Consultant or his/her employees, or services of others ordered by the Consultant or his/her employees prior to receipt of Notice of Termination whether or not such materials or final instruments of services of others have actually been delivered, provided that the Consultant or its employees are not able to cancel such orders for materials or services of others. Compensation for the Consultant in the event of termination by the City shall be determined by the **[City Manager or Department Head]** in accordance with the percentage of project completed. In the event that this Agreement is terminated pursuant to this Section 16.1, Consultant shall not be entitled to any additional compensation over that provided herein; nor shall Consultant be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the City pursuant hereto.

16.2. **Consultant Termination.** Consultant may terminate this Agreement upon thirty (30) days written notice to the City only for good cause. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting

good cause. In the event of termination, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the City's last payment shall be relinquished to the City. The City may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

- 16.3. **Consultant Failure to Perform.** Should the Consultant fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the City may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. Consultant shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by City by virtue of the Consultant's breach of this Agreement.
- 16.4. **Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.5. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## 17. INTERPRETATION OF AGREEMENT

- 17.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. **Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.
- 17.3. **Headings.** The headings and captions appearing at the commencement of the Sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the Section or Subsection thereof at the head of which it appears, the language of the Section or Subsection shall control and govern in the construction of this Agreement.

- 17.4. **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 17.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting.

## 18. GENERAL PROVISIONS

- 18.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement except as noted in Sections 5 and 9, above.
- 18.2. **Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultant to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 18.3. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

- 18.4. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.6. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 18.8. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 18.9. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.10. **Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 18.11. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs expended in the action.

- 18.12. **Venue.** The venue for any litigation shall be Marin County, California and Consultant hereby consents to jurisdiction in Marin County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.13. **Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”

City of Novato

“Consultant”

[Name of Company or Individual]

By:

\_\_\_\_\_  
*Signature*

By:

\_\_\_\_\_  
*Signature*

Printed:

Title:

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Printed:

Title:

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attest:**

By:

\_\_\_\_\_  
Laura McDowall,  
City Clerk

Date:

\_\_\_\_\_

**Approved as to form:**

By:

\_\_\_\_\_  
Jeffrey A. Walter,  
City Attorney

Date:

\_\_\_\_\_

WORKER'S COMPENSATION INSURANCE ACKNOWLEDGEMENT

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**EXHIBIT A**  
**(Scope of Services)**

**Section 1      General Description of Work Objectives**

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Brief statement of work as detailed in Section 3.0

Scheduling details

**Section 2      Period of Performance and Location(s)**

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**2.1 Project Period**

**Starting:** Date of Agreement    **Ending:**

**2.2 Locations**

1.

**Section 3      Services/Tasks/Deliverables**

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Descriptions and timeframes for completion for discrete tasks

<b>ITEMIZATION OF SERVICES &amp; DELIVERABLES</b>		
<b>Task/Deliverables</b>	<b>Interval/Timing</b>	<b>Payment</b>
<b>3.1</b> Item Description		
<b>3.2</b> Item Description		
<b>3.3</b> Item Description		

**Section 4      Description of Worksite Conditions and Delivery Requirements**

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**(Examples)**

- 4.1** All non-hazardous and hazardous materials will be properly disposed of according to Novato Sanitary District and County waste disposal standards.
- 4.2** Sub-contractors will carry insurance to meet the City’s insurance requirements as specified in this contract.
- 4.3** All performing personnel will be licensed in the profession for the labor

classification of their assigned work, or, if apprenticed, will perform under the supervision of a licensed professional.

- 4.4 Any incidental damage to \_\_\_\_\_ will be repaired to the satisfaction of the City Project Manager.
- 4.5 All personnel will be required to follow County and CDC COVID guidelines regarding use of proper Personal Protective Equipment while on the work site.

**Section 5 Labor Classification**

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Pursuant to the requirements of California Labor Code Section 1771, the labor performed for the work described must be compensated at general prevailing wage rates for outsourced work over \$1,000. Prevailing wage rates can be found at <https://www.dir.ca.gov/public-works/prevailing-wage.html>.

Invoicing will include a breakdown of hours and hourly rates for the labor performed.

Job Classification Titles	No. of Employees Positions	No. of Subcontract positions	Hourly Rate Regular	Hourly Rate Overtime

**Section 6 Quality Control/Quality Assurance and Warranties**

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**(Example)**

- 6.1 Work will be subject to a 7-year replacement or repair warranty.

**Section 7 Additional Requirements**

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**(Example)**

Contractor’s work is subject to inspection by the Project Manager at the following project intervals.

- 7.1 Sample
- 7.2 Sample 2

Rates and Limits

Invoicing procedures & payment terms

**Section 8      Points of Contact (Contract Supervision and Billing)**

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**Section 9      Additional References**

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**(Examples)**

- 9.1** Applicable maps and drawings
- 9.2** City Policy or ordinances
- 9.3** Professional guidelines
- 9.4** Consultant's proposal

**EXHIBIT B**  
**(Approved Fee Schedule)**