

CONSTRUCTION SERVICES AGREEMENT

Providing Payment of Prevailing Wages

[Use this form for all "small" under \$200K public works jobs]

(City of Novato / [Company or Individual])

1. IDENTIFICATION

This CONSTRUCTION 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.] ("Contractor") (collectively, "parties").

2. RECITALS

- 2.1. City has determined that it requires the following construction services from a contractor: [enter description of contractor's services]
- 2.2. Contractor 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. Contractor 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. Contractor 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 Contractor 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 Contractor as a material inducement to enter into this Agreement. Contractor 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 Contractor's work by City shall not operate as a waiver or release. Contractor represents and warrants to City that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Contractor 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 Contractor to practice its profession. Contractor shall indemnify and hold harmless the v from and against any and all claims or expenses caused or occasioned directly or indirectly by Contractor's failure to so perform

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

3. DEFINITIONS

- 3.1. “Scope of Services”: Such professional services as are set forth in Contractor’s [enter Contractor’s proposal date] proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. “City Reference Specifications”: The City’s set of Reference Specifications, including the State of California Department of Transportation Standard Specifications, Standard Plans, and Manual on Uniform Traffic Control Devices and Marin County Uniform Construction Standards, in effect at the time of City Council approval of project plans & specifications, which are incorporated herein by reference and are hereby accepted as Reference Specifications. These specifications shall provide the technical standards for work as applicable, in the opinion of the Director of Public Works. Copies are available online, or at City Hall. If a discrepancy in contract parts exists, the governing ranking of contract parts in descending order is: special provisions; project plans; revised standard specifications; standard specifications; revised standard plans; standard plans; supplemental project information; written numbers and notes on a drawing govern over graphics; detail drawing governs over a general drawing; specific specification governs over a general specification; specification in section governs over a specification referenced by that section.
- 3.3. “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 Contractor.
- 3.4. “Approved Fee Schedule”: Contractor’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.
- 3.5. “Maximum Amount”: The highest total compensation and costs payable to Contractor by City under this Agreement. The Maximum Amount under this Agreement is [redacted] Dollars (\$ [redacted]).
- 3.6. “Commencement Date”: [date].
- 3.7. “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 17 (Termination) below. Contractor 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. CONTRACTOR'S DUTIES

- 5.1. Services.** Contractor 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, Contractor 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 Engineer or City Council may authorize extra and/or changed work. Contractor expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Contractor to secure the Council's or City Engineer'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 Contractor thereafter shall be entitled to no compensation whatsoever for performance of such work.
 - 5.2.2.** If the Contractor 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 Contractor on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the City and the Contractor. Such Supplemental Agreement shall be executed by the Contractor and be approved by the City Manager or City Engineer.
 - 5.2.3.** In the event City determines that such work does not constitute extra work, Contractor 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 Contractor. Said written appeal shall include a description of each

and every ground upon which Contractor challenges the staff's determination. The City Manager's or City Engineer's decision shall be final.

- 5.3. Budgetary Notification.** Contractor shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Contractor shall concurrently inform the Agreement Administrator, in writing, of Contractor'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.** Contractor shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. Professional Standards.** Contractor shall perform all work to the highest standards of Contractor's profession and in a manner reasonably satisfactory to the City. Contractor 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 but not limited to 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, Contractor shall not perform any work for another person or entity for whom Contractor 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 Contractor's performance of such work.
- 5.7. Appropriate Personnel.** Contractor 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 Contractor or under its supervision or by subcontractor(s) of Contractor, and all personnel engaged in the work shall be qualified to perform such services. [Name of Project Manager] shall be Contractor's project administrator and shall have direct responsibility for management of Contractor's performance under this Agreement. No change shall be made in Contractor's project administrator without City's prior written consent.
- 5.8. Prevailing Wages.** This Agreement is subject to the prevailing wage law 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 the California Labor Code. In particular, Contractor acknowledges that prevailing wage determinations are available for work performed under this Agreement.
- 5.9. Unauthorized Delay.** In accordance with Government Code 53069.85, and all other applicable law, the Contractor agrees to forfeit and pay City the amount of Two Hundred Dollars (\$200) per day for each and every day of unauthorized delay beyond

the Termination Date, which shall be deducted from any monies due to Contractor. This payment shall be considered liquidated damages. Contractor agrees that such liquidated damages are reasonable under the circumstances existing at the time of execution of the contract, that such liquidated damages are to compensate City for losses that are difficult to measure, and that such damages are not a penalty.

- 5.10. Unforeseeable Delay.** Contractor shall not be deemed in breach of this Agreement and no forfeiture due to delay shall be made because of any delays in the completion of the Scope of Services due to unforeseeable causes beyond the control and without the fault or negligence of Contractor provided Contractor requests from the Agreement Administrator an extension of time in writing. Unforeseeable causes of delay beyond the control of Contractor shall include acts of God, acts of a public enemy, acts of the government, acts of City, or acts of another contractor in the performance of a contract with City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather, or delays of subcontractors due to such causes, or delays caused by failure of the owner of a utility to provide for removal or relocation of existing utility facilities. Delays caused by actions or negligence of Contractor or its agents, servants, employees, officers, subcontractors, directors, or of any party contracting to perform part of all of the Scope of Services or to supply any equipment or materials shall not be unforeseeable delays. Unforeseeable delays (those beyond Contractor's control) shall not entitle Contractor to any additional compensation beyond the Maximum Amount. The sole recourse of Contractor shall be to seek an extension of time from the Agreement Administrator.
- 5.11. Defective Work.** All work which is defective in its construction or deficient in any of the requirements set by City Reference Specifications shall be remedied or replaced by Contractor in an acceptable manner at its own expense. Defective work shall not entitle Contractor to any additional compensation beyond the Maximum Amount.
- 5.12. Permits and Approvals.** Contractor shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Contractor's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.
- 5.13. Notification of Organizational Changes.** Contractor shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Contractor's firm or of any subcontractor. Change of ownership or control of Contractor's firm may require an amendment to this Agreement.

5.13.1. In the event Contractor 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 Contractor to conduct the inspections Contractor has expressly agreed to perform pursuant to this agreement. Contractor shall be solely liable for said inspections performed by

Contractor. Contractor shall certify in writing to the City as to the completeness and acceptability of each inspection of improvement or construction which Contractor agrees to inspect hereunder.

- 5.14. Records.** Contractor 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 Contractor 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 AND ASSIGNMENT

- 6.1. General Prohibition of Assignment.** This Agreement covers construction services of a specific and unique nature. Except as otherwise provided herein, Contractor shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. Contractor Responsible.** Contractor shall be responsible to City for all services to be performed under this Agreement.
- 6.3. Subcontracting.** Contractor shall not subcontract any portion of the performance contemplated and provided for herein unless (1) such subcontracting is specifically described in the proposal attached hereto or (2) the City provides prior written approval. In any event, Contractor shall supervise all work subcontracted by Contractor in performing the Services and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work shall not relieve Contractor from any of its obligations under this Agreement with respect to the Services. Contractor is obligated to ensure that any and all subcontractors performing any Services shall be fully insured in all respects and to the same extent as set forth under Section 13, to City's satisfaction. All subconsultants 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 thereto must be approved by the Agreement Administrator in writing as an amendment to this Agreement.
- 6.4. Compensation for Subcontractors.** Contractor shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

7. COMPENSATION

- 7.1. **General.** City agrees to compensate Contractor for the services provided under this Agreement, and Contractor 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. Contractor shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Retention.** City may retain up to 5% of each payment until project completion. Contractor may at its own expense substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code 22300. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to City. Upon satisfactory completion of this Agreement, the securities shall be returned to Contractor.
- 7.3. **Invoices.** Contractor 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. Contractor shall include a copy of each subcontractor invoice, if any, for which reimbursement is sought in the invoice.
- 7.4. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Contractor except as otherwise required by law. Contractor shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.5. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Contractor.
- 7.6. **Additional Work.** Contractor 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 in a written change order by either lump sum, negotiated, or agreed unit price. Contractor shall not undertake any such work without prior written approval of the City. A written change order may be issued without amendment to this Agreement, so long as such written change order does not cause the Maximum Amount to be exceeded. Contractor shall only be compensated for such additional work at the rates and costs for labor and materials included in the bid or proposal.
- 7.7. **City-Initiated Changes** - City may propose in writing changes to Contractor's work within the Scope of Services described. If Contractor is of the opinion that any proposed change causes an increase or decrease in the cost, or a change in the schedule for

performance, of the services, Contractor shall notify City in writing of that fact within five (5) days after receipt of written proposal for changes.

- 7.8. Contractor-Initiated Changes** – Contractor may propose in writing changes to the Scope of Services, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of this Agreement. Contractor must notify the City’s Agreement Administrator of any changed conditions upon discovery and before they are disturbed. The Public Works Director shall investigate, and if the Public Works Director determines that the conditions will materially affect costs, will issue a Change Order adjusting the compensation for such portion of the Scope of Services. If the Public Works Director determines that conditions are changed conditions and they will materially affect performance time, the Contractor, upon submitting a written request, will be granted an extension of time. If the Public Works Director determines that the conditions do not justify an adjustment in compensation or time, the Contractor will be notified in writing. This notice will also advise the Contractor of its obligation to notify the Public Works Director in writing if the Contractor disagrees.

When and if City and Contractor reach agreement on any such proposed change and its effect on the cost and time for performance, they shall confirm such agreement in writing as an amendment to this Agreement. Contractor may not cease work or delay progress on the original project pending negotiations over changes, and must continue to diligently complete the project.

Should the Contractor disagree with the decision, it may submit a written notice of potential claim to the Public Works Director before commencing the disputed work. In the event of such a dispute, the Contractor shall not be excused from any scheduled completion date provided by the Contract and shall proceed with all work to be performed under the Contract. However, the Contractor shall retain any and all rights provided by either Contract or law which pertain to the resolution of disputes and protests between the contracting parties.

The Contractor’s failure to give notice of changed conditions promptly upon their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith.

8. LABOR CODE

- 8.1. Prevailing Wage Law.** This Agreement is subject to the requirements of the prevailing wage laws, including, but not limited to, California Labor Code Section 1720 et seq., and California Labor Code Section 1770 et seq., as well as Code of Regulations, Title 8, Section 16000 et seq., which require payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Contractor shall defend, indemnify, and hold harmless City, and its officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure of Contractor to comply with such prevailing wage laws.

- 8.2. Payment of Prevailing Wages.** Contractor shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification.
- 8.3. Forfeiture.** Contractor shall forfeit as a penalty to City Two Hundred Dollars (\$200), or any greater penalty provided in the Labor Code, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under this Agreement employed in the performance of the Scope of Services by Contractor or by any subcontractor of Contractor in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor.
- 8.4. Apprentices.** Contractor shall comply with the provisions of Labor Code 1777.5 concerning the employment of apprentices on public works projects. Contractor shall be responsible for ensuring compliance by its subcontractors with Labor Code 1777.5.
- 8.5. Payroll Records.** Pursuant to Labor Code 1776, Contractor and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code 1811 and Labor Code 1815 for any work performed by his or her employees on the public works project. The payroll records shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code 1776.
- 8.6. 8-Hour Workday.** This Agreement is subject to 8-hour workday and wage and hour penalty laws, including, but not limited to, Labor Code 1810 and Labor Code 1813. Contractor and any subcontractor(s) of Contractor shall strictly adhere to the provisions of the Labor Code regarding 8-hour workday and 40-hour work week requirements, and overtime, Saturday, Sunday, and holiday work. Pursuant to the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Contractor's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to City \$25.00, or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the work by Contractor or by any subcontractor(s) of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.

8.7. Registration with DIR. Contractor and any subcontractor(s) of Contractor shall comply with the provisions of Labor Code 1771 and Labor Code 1725.5 requiring registration with the Department of Industrial Relations (DIR).

9. PUBLIC CONTRACT CODE.

9.1. Prompt Payment. This Agreement is subject to the provisions of Article 1.7 (commencing at § 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

9.2. Public Works Claims. To the extent applicable, this Agreement is subject to the provisions of California Public Contract Code Section 9204, which mandates certain procedures regarding the resolution of public works claims. A summary of these procedures is included in the Reference Specifications. This Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration if the parties fail to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

9.3. Ineligible Subcontractor(s). This Agreement is further subject to the provisions of Public Contracts Code 6109 which prohibits Contractor from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to Labor Code section 1777.1 or Labor Code section 1777.7.

9.4. Assignment of Actions. Contractor and any and all subcontractors shall offer and agree to assign to City all rights, title, and interest in and to all causes of action it/they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 4) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgment by the parties.

10. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including but not limited to computer-aided design files, developed by Contractor in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) 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 Contractor.

11. RELATIONSHIP OF PARTIES

- 11.1. General.** Contractor is, and shall at all times remain as to City, a wholly independent contractor.
- 11.2. No Agent Authority.** Contractor 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. Contractor, its officers, employees and agents shall not have any power to bind or commit the City to any decision or course of action, and Contractor, 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 Contractor or any of Contractor’s employees, except as set forth in this Agreement. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.
- 11.3. Independent Contractor Status.** Under no circumstances shall Contractor or its employees look to the City as an employer. Contractor shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Contractor’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Contractor specifically assumes the responsibility for making such a determination. Contractor 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.
- 11.4. Indemnification of CalPERS Determination.** In the event that Contractor or any employee, agent, or subcontractor of Contractor 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, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor 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.

12. INDEMNIFICATION

- 12.1. Definitions.** For purposes of this Section 12, “Contractor” shall include Contractor, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly

employed by either Contractor or its subcontractors, in the performance of this Agreement. "City" shall include City, its officers, agents, employees and volunteers.

- 12.2. Contractor to Indemnify City.** To the fullest extent permitted by law, Contractor 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 Contractor's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Contractor or failure to comply with any provision in this Agreement.
- 12.3. Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential, or otherwise. Property damage shall include injury to any personal or real property. Contractor shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City.
- 12.4. 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.
- 12.5. Defense Deposit.** The City may request a deposit for defense costs from Contractor with respect to a claim. If the City requests a defense deposit, Contractor shall provide it within 15 days of the request. Counsel shall be satisfactory to the City.
- 12.6. Waiver of Statutory Immunity.** The obligations of Contractor under this Section 12 are not limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City.
- 12.7. Indemnification by Subcontractors.** Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 12 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Contractor's behalf.
- 12.8. Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Contractor'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.

13. INSURANCE

- 13.1. Insurance Required.** Contractor shall maintain insurance as described in this Section and shall require all of its subcontractors, Contractors, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of

Contractor. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

13.2. 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 Contractor’s obligation to provide them. Contractor 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.

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

General Liability:	\$2,000,000 per occurrence \$4,000,000 aggregate / \$5,000,000 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
Contractors' Pollution Legal Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Builder’s Risk	As applicable

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

13.4. General Liability Insurance. Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.

- 13.5. Worker's Compensation Insurance.** Contractor 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 Contractor 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.
- 13.6. Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 13.7. 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 Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 13.8. Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of Novato must be endorsed as an additional insured for each policy required herein, for liability arising out of ongoing and completed operations by or on behalf of the Contractor. Contractor's insurance policies shall be primary as respects any claims related to or as the result of the Contractor's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or Contractors 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 Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 13.9. Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Contractor 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 Contractor under this Agreement. Failure of the Contractor 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.
- 13.10. Notices.** Contractor 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. Contractor shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Contractor 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: Public Works Department, 922 Machin Avenue, Novato, CA 94945.

13.11. Contractor's Insurance Primary. The insurance provided by Contractor, 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 Contractor's insurance and shall not contribute with it.

13.12. Waiver of Subrogation. Contractor hereby waives all rights of subrogation against the City. Contractor shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.

13.13. Report of Claims to City. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted to Contractor's insurer in connection with the services under this Agreement.

13.14. Premium Payments and Deductibles. Contractor must disclose all deductibles and self-insured retention amounts to the City. The City may require the Contractor 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. Contractor shall be responsible for all premiums and deductibles in all of Contractor's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.

13.15. Duty to Defend and Indemnify. Contractor'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.

14. MUTUAL COOPERATION

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

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

15. 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 Contractor'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 Contractor:

[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

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 5.14 (Records), Section 11.4 (Indemnification of CalPERS Determination), Section 12 (Indemnification), Section 13.7 (Claims-Made Policies), Section 14.2 (Contractor Cooperation in Defense of Claims), and Section 19.1 (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.

17. TERMINATION

17.1. City Termination. The City may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Contractor of the services required. Notice of Termination of this Agreement shall be given in writing to Contractor and shall be sufficient and complete when same is emailed to Contractor

and simultaneously deposited in the United States mail postage prepaid and certified, addressed as set forth in Section 15 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by Contractor. If City should terminate this Agreement, the Contractor 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 Contractor or his/her employees, or services of others ordered by the Contractor 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 Contractor or its employees are not able to cancel such orders for materials or services of others. Compensation for the Contractor in the event of termination by the City shall be determined by the City [insert department head] in accordance with the percentage of project completed. In the event that this Agreement is terminated pursuant to this Section 17.1, Contractor shall not be entitled to any additional compensation over that provided herein; nor shall Contractor 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.

- 17.2. Contractor Termination.** Contractor may terminate this Agreement upon thirty (30) days written notice to the City only for good cause. Contractor'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.
- 17.3. Contractor Failure to Perform.** Should the Contractor 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. Contractor 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 Contractor's breach of this Agreement.
- 17.4. Compensation Following Termination.** Upon termination, Contractor shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor 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.
- 17.5. Remedies.** City retains any and all available legal and equitable remedies for Contractor's breach of this Agreement.

18. INTERPRETATION OF AGREEMENT

- 18.1. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.2. 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 Contractor 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 Contractor.
- 18.3. 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.
- 18.4. 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).
- 18.5. 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.
- 18.6. 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.

19. GENERAL PROVISIONS

- 19.1. Confidentiality.** All data, documents, discussion, or other information developed or received by Contractor for performance of this Agreement are deemed confidential and Contractor 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.

- 19.2. Conflicts of Interest.** Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractor 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.
- 19.3. Non-assignment.** Contractor 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 Contractor.
- 19.4. Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 19.5. 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.
- 19.6. Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 19.7. Non-Discrimination.** Contractor 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 19.8. Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Contractor unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Contractor 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.

- 19.9. Excused Failure to Perform.** Contractor shall not be liable for any failure to perform if Contractor 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 Contractor.
- 19.10. 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.
- 19.11. Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, each party shall pay its own costs, including any accountants' and attorneys' fees expended in the action.
- 19.12. Venue.** The venue for any litigation shall be the Superior Court of California for the County of Marin and Contractor hereby consents to sole jurisdiction in that court for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.13. 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.

[Signature Page to Follow]

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

“Contractor”

[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

Brief statement of work as detailed in Section 3.0

Scheduling details

Section 2 Period of Performance and Location(s)

2.1 Project Period

Starting: Date of Agreement **Ending:**

2.2 Locations

1.

Section 3 Services/Tasks/Deliverables

Descriptions and timeframes for completion for discrete tasks

ITEMIZATION OF SERVICES & DELIVERABLES		
Task/Deliverables	Interval/Timing	Payment
3.1 Item Description		
3.2 Item Description		
3.3 Item Description		

Section 4 Description of Worksite Conditions and Delivery Requirements

(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

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

(Example)

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

Section 7 Additional Requirements

(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)

Section 9 Additional References

(Examples)

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

EXHIBIT B
(Approved Fee Schedule)