

City of St. Helena



Request for Proposals

Professional Civil Engineering Services
For
Drinking Water System
Disinfection By-Product Evaluation

Release Date: January 17, 2017

Proposals Due: Tuesday, February 14 by 5:00 PM

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I. SOLICITATION

The City of St. Helena (City) is soliciting proposals from consultants/consultant teams (Consultant) qualified to provide an analysis of disinfection by-product (DBP) formation in the City's drinking water system. Prospective respondents are advised to read this request for proposals (RFP) carefully prior to submitting a proposal.

II. PROJECT OVERVIEW

The City has increasing difficulty in managing the formation of the five haloacetic acids (HAA5) that are regulated under Stage 2 of the Disinfection/Disinfectant Byproduct rule. The last two quarters of sampling have resulted in the locational running annual average (LRAA) for HAA5 exceeding the maximum contaminant level of 60 ug/L, with LRAA of 61 ug/L and 70 ug/L for the third and fourth quarters of 2016. Corresponding sample data for HAA5 is summarized in the table below.

| Sample Site | HAA5 (ug/L) | | | | Locational Running Annual Average |
|--------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-----------------------------------|
| | 1 st Quarter | 2 nd Quarter | 3 rd Quarter | 4 th Quarter | |
| | A | B | C | D | (A+B+C+D)/4 |
| DBP #6 Knoll Place Stage 2 SMP | 11/18/15 | 2/17/16 | 5/25/16 | 8/24/16 | 8/24/16 |
| | 8.5 | 89 | 80 | 68 | 61.38 |
| DBP #6 Knoll Place Stage 2 SMP | 2/17/16 | 5/25/16 | 8/24/16 | 11/17/16 | 11/17/16 |
| | 89 | 80 | 68 | 42 | 69.75 |

The City is seeking a qualified consultant to assist in determining the most feasible, reliable, and cost-effective solution to prevent and/or reduce the formation and transmission of DBPs in the City's water treatment and distribution system.

III. SCOPE OF SERVICES

The required Consultant services include all work necessary to review and analyze available data, develop a list of alternative methods to reduce the concentration of DBPs in the City's water distribution system, evaluate those alternatives, and recommend an alternative for implementation.

The scope is anticipated to include the following tasks:

A. Background

Collect and review all available data from the City water treatment plant operators. The City has extensive data including monitoring data, compliance reports, operating data, and jar testing data. This task should include meeting with treatment plant operators to review the City system and efforts that have been made to control DBP formation. Consultant is responsible for identifying any data gaps, and recommending to the City the means and methods for obtaining

any additional data required. Deliverable will include a summary of data to be used in the evaluation.

B. Develop Alternatives

Using data collected and consultant's expertise, develop a list of alternative methods to control DBP formation, and develop criteria to be used in evaluating the alternatives. Criteria are anticipated to include metrics needed to evaluate the alternatives on feasible, effectiveness, reliability, operating cost, and capital cost. Deliverable includes a list of alternatives to be evaluated and an evaluation criteria that has been approved by the City.

C. Evaluate Alternatives

Evaluate alternatives based on criteria establish in previous tasks. Prepare one draft and a final technical memorandum presenting the alternatives, alternative evaluation, and recommending one of the alternatives. Deliverable includes a technical memorandum evaluating and recommending one of the alternatives.

IV. PROPOSAL REQUIREMENTS AND SUBMISSION INSTRUCTIONS

A. Preproposal Meeting

A pre-proposal meeting will not be held.

B. Submission Instructions

If you are interested in this RFP, please notify Christina Cook by email at ccook@cityofstheleena.org so that you will be added to the notification list for addendums. Failure to notify Christina could result in missing important and require information and could result in disqualification.

Proposals must be received by the City of St. Helena Public Works Department, **by 5:00 PM on Tuesday, February 14**. Proposals submitted by facsimile or electronic mail will not be accepted. A total of three (3) original and one (1) electronic copy provided on CD or flash drive must be submitted to:

Christina Cook
Administrative Assistant
Public Works Department
City of St Helena
1480 Main Street
St Helena, CA 94574

Proposals must be sealed and show the following information on the outside of the package in the lower left corner: firm's name, address, RFP Title. Late or incomplete proposals will not be considered.

C. Proposal Requirements

1. Cover Letter

- List the name, address, and telephone number of the firm
- Be signed by an authorized representative of the Consultant. The Consultant shall furnish documentation that the person signing the proposal is empowered with signatory authority for the Consultant. The form could be a Corporate Resolution
- State that the proposal is firm for a 90-day period from the proposal submission

deadline

- Provide the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the Consultant selection process.
- Provide the location of the Consultant's headquarters. In addition, provide the location of any local support offices, which will provide service to the City.
- Acknowledge that the Consultant will provide the insurance and indemnification required per the attached Professional service agreement.

2. *Project Team Information*

Consultant must provide the names and positions of all staff proposed including staff for proposed sub- Consultants. The proposal should also designate who will be the field supervisor, project manager in charge of the project, and who will be the City's contact throughout the project. It is allowable for a single individual to fulfill multiple roles by the Consultant's staff.

3. *Project Understanding and Innovation*

Include visions or concepts for delivering the Project.

4. *Work Plan / Scope of Work*

Include a work plan/scope of work meeting the minimum requirements of the Scope of Services identified in this RFP. Consultant is encouraged to modify or expand the minimum Scope of Services if they believe it is necessary to achieve the project goals.

5. *Project Schedule*

Schedule needs to be adequate and reasonable to ensure timely completion of the tasks listed in the Work Plan / Scope of Work. Emphasis should be placed on realistic permitting review cycles.

6. *Sub Consultant & Work by Others*

Identify any and all sub consultant proposed to serve on the project, with background information for each and particular experience of key personnel, including project descriptions and resumes.

This section should describe all work not included in the proposal. Any work that is needed to complete the project that is not listed in the "Work Done by Others" will be considered part of the work provided by the Consultant and included in the proposal. Please include a list of tasks which the Consultant expects City staff to perform, information the Consultant expects the City to provide, and an estimated amount of City staff time required for each task of the scope of work.

7. *Relevant Experience and References*

The Consultant must state the qualifications and experience of the proposed team, emphasizing the specific qualifications and experience acquired while providing services similar to those being sought by the City, particularly for the Project Manager and other key project staff members assigned to the project. Except under circumstances beyond the Consultant's control, the City will not accept substitutions of key members of the team put forth as part of the winning proposal.

For all staff members, describe their role giving not only their title but also the specific services they will perform and illustrate clearly the applicability of the individual's background, education, and experience to his or her assigned role.

Provide a brief description of at least three similar projects for which the Consultant has provided services during the past five years. For all referenced projects list the:

- Client (contact person, address and phone number)
- Project description and location
- Description of services by Consultant
- Total value of services provided by Consultant
- Consultant's project manager
- Key personnel involved
- Sub consultant employed

8. Cost Proposal

Cost proposal shall be submitted in a separate, sealed envelope. Only one copy of the cost proposal needs to be submitted. This section shall include a cost matrix showing the following information:

- Estimate of time (in hours) to perform the work
- The hourly rates for each design team member
- Total cost estimate

The cost proposal shall identify any other direct and indirect costs. The cost proposal shall also include any exceptions or assumptions made in its preparation.

V. SELECTION CRITERIA

The Public Works Department intends to select a Consultant based on demonstrated competence and qualifications for the types of services to be performed at a fair and reasonable price to the public. The Public Works Department will review all proposals and evaluate them according to the following criteria:

- Qualifications of Team
- Project Understanding and Innovation
- Work Plan / Scope of Work
- Project Schedule
- Similar Experience / References

Consultant may be either selected based on information included in the proposal or the Consultant may be requested to interview prior to final selection.

VI. AGREEMENT

A sample agreement that will be used for this contract is attached. The City will require the selected Consultant to provide the indemnification and insurance required per the attached sample agreement. Consultant is advised to pay close attention to the indemnification and insurance requirements.

VII. QUESTIONS

Please contact Steven Palmer, Director of Public Works, with any questions.

Phone: 707-968-2624

Email: spalmer@cityofsthelena.org

VIII. ATTACHMENTS

Exhibit A - *Required Professional Services Agreement*

Exhibit A

Required Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on _____, 2016 by and between the City of St. Helena, located in the County of Napa, State of California (City), and _____ (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as _____.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services and work (together, “services”) set forth in **Exhibit A, “Scope of Services”** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or **Exhibit A, “Scope of Services”**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of services shall be as identified in **Exhibit A, “Scope of Services”**.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in **Exhibit B, “Compensation”**, attached hereto and made a part hereof. Total compensation shall not exceed \$_____, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the services performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the

invoice shall be approved and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the Agreement price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

C. Payment to the Consultant for services performed pursuant to this Agreement shall not be deemed to waive any defects in services performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's services under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's services within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject services by a timely written explanation, otherwise Consultant's services shall be deemed to have been accepted. City's acceptance shall be conclusive as to such services except with respect to latent defects and fraud. Acceptance of any of Consultant's services by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Consultant, its agents, representatives, or employees, as indicated:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least \$2,000,000 of professional liability insurance.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

E. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of services or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the services of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

F. Waiver of Subrogation. The workers compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the services performed by the named insured for the City.

G. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is a design professional, the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other

intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or Work Product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or Work Product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or Work Product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant’s conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF SERVICES

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed

boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this Agreement, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant's records and design calculations will be available for examination and audit if and as required. The cost of any reproductions shall be paid by City.

SECTION 17 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the services as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

SECTION 18 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
1480 Main Street
St. Helena, California 94574

To Consultant:

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 19 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all services in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for services performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 20 – ATTORNEY FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 21 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 22 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 23 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 24 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any services performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 25 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 26 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 27 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 28 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

City:

By: _____

By: _____

Name: _____

Name: Jennifer Phillips

Title: _____

Title: City Manager

Approved as to Form:

By: _____

Name: Thomas B. Brown

Title: City Attorney