



STAFF REPORT	
RE: Approve RFP of On-Call Planning Services	MEETING DATE: April 4, 2024
SUBMITTED BY: Dustin J. Rief, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL: To Approve the RFP for on-call Planning services

BACKGROUND/DISCUSSION: In November 2023 the City Received the resignation of the previous contract planner and is currently working with an interim contract planner. Attached is an Request for Proposals (RFP) for permanent contract planning services. The projected timeline for this project is as follows:

April 5: Publish the Planning services RFP

May 3, at 4:00 PM: Proposals are due

June 20: Council Approval Planning Services Professional Services Agreement

OPTIONS: Approve

Modify and Approve

Continue with Interim Services

FISCAL IMPACT:

None

Comments:

Staff Recommends approval of the RFP for publication

SUGGESTED MOTIONS: Motion to Approve the RFP for On-Call Planning Services

Attachments:

**On Call Planning
Services RFP**

Request for Proposals

On-Call Planning and Environmental Consulting Services



Contact: Dustin Rief, City Manager

530-235-4822 ext 103

Preferred: citymanager@ci.dunsmuir.ca.us

Key RFP Dates

Issued: April 5, 2024

Proposals Due: May 3, 2024 at 4:00 PM PST

Section 1. Project Overview

The City of Dunsmuir (hereinafter referred to as the “City”) is seeking proposals from qualified firms to enter into a Multi-Year Professional Services Agreement to perform professional planning and environmental services on an “on-call” basis. The City is requesting proposals from persons or firms with the expertise necessary to process development applications for residential, commercial, industrial, and mixed-use development projects; application of California Environmental Quality Act; development and management of planning grants; and conformance with federal, state, and local regulations. The selected consultant may also facilitate, lead, or assist planning staff with long-range planning initiatives such as General Plan and Master Plan updates. The Professional Services Agreement is expected to serve for a total of five (5) years with an option of an automatic two-year extension based on work performance and workflow needs.

Background

The City of Dunsmuir is located in Southern Siskiyou County. One of nine incorporated cities, Dunsmuir averages approximately 1700 residents over the last decade. Five miles long and an average quarter-mile wide, Dunsmuir is set against a mountainous backdrop in the steep-walled Sacramento River Canyon. A small, historic downtown and small residential lots give the city a rural small-town character. The downtown is home to restaurants, hotels, small businesses, community services, and the landmark California Theater. The City of Dunsmuir hosts an Amtrak Station with daily service on the Coast Starlight line. The Amtrak station is located on the Union Pacific Railroad yard with an active change-out point for Union Pacific freight trains.

Dunsmuir Avenue – the City’s main arterial and Interstate 5 cross the Sacramento River with adjacent bridges approximately 1/8-mile long and several hundred feet above the river valley. The Dunsmuir Avenue bridge divides the city north and south. Travel in the northerly direction on Dunsmuir Avenue throughout the city is consistently uphill.

Development within the City is slow to non-existent with the majority of planning projects being instigated by the City. The City owns and manages several acres of land throughout the City including a municipal airport; Mott Airport in the northern most portion of the city. The majority of building and planning projects involve remodeling and infill projects. Residential development in southern Dunsmuir sits on steep grades sloping from Interstate 5 to the railroad and the river near the bottom of the canyon. Residential development north of the bridge is mainly east of the river and west of Interstate 5, on a gently slope set above the river.

Currently, the city has no dedicated general Planning staff. The role of city planner has been held by a number of contractors throughout the years. The city does employ a Hazard Resilience Planner funded through the California Office of Emergency Services (CalOES) for a five-year term and one Building Official on contract part-time. The city operates under a City

Council-City Manager form of government. The City Manager will be the direct contact for the awarded on-call planning and environmental services contractor.

Scope of Services

Under the direction of the Planning Director or City Manager, the consultant will provide the range of expertise necessary to carry out the normal functions of a professional planner and planning department. All services provided by the consultant shall be performed by individuals who meet the qualifications, education, and certifications/licensing requirements for the professional Planning levels of the specified task. On-site work may be necessary from time to time to attend meetings or to perform some of the services described below.

Task and services to be assigned by city staff include, but not limited to:

General Department Work

- Provide qualified and experienced staff to provide planning services and address planning and environmental-related staff questions;
- Provide application processing services, including meetings with applicants; preparing plans for completeness and compliance with local and state guidelines development standards; prospering staff reports and making presentations; and coordinating with other city departments and outside agencies;
- Assist with updates and creation of long-term and short-terms plans including General Plan updates, ordinance updates, and master plans to meet city and state goals;
- Attend City Council, Planning Commission, and other meetings as necessary to provide information and analysis to the City's decision-makers;
- Provide development processing, plan and map checking, and on-site inspection for all new development activity, when needed; and
- Assist with planning special projects which may include grant preparation, grant management, and project management.

Training

- Provide planning and environmental training for city staff, City Council, and Planning Commission to familiarize these parties with planning and environmental regulation, laws, and best practices.

Environmental Services

- Prepare minor environmental determinations as required to comply with state and federal law for public and private projects being processed by the city;
- Environmental clearance and permitting for city projects as needed;
- Provide environmental on-site inspections and field surveys;

- Provide oversight, management, and preparation of all environmental documents to be prepared by outside consultants; and
- Provide long-term monitoring and reporting to ensure compliance with mitigation monitoring programs.

Housing Services

- Assist with development of housing policies and programs, implementation of housing programs and development of affordable housing projects.

Section 2 RFP Submittal Requirements

Eligibility

This RFP is open to all interested firms. Firms must certify in a cover letter that it meets the following conditions:

1. Is not in litigation that may have a significant and adverse impact on the ability to perform services for the City of Dunsmuir.
2. Has the resources, expertise, and commitment to complete all components of the project in a timely and competent manner.
3. City of Dunsmuir requires that the professional who signs the proposal as the project manager certify that they will be present at all meetings requested by the staff members and will fully participate in the day-to-day management of the contract.

The proposal should not exceed 24 total written pages (excluding cover letter, proposal cover, table of contents, and supplemental information, such as resumes, insurance, and the statement of modifications). Supplemental information and appendices should be relevant and brief. Proposals shall be organized using the following format:

1. **Cover Letter:** Identify the prime consultant and describe any subcontract arrangements. Please identify the person who is authorized to negotiate for the team and indicate that the proposal represents a firm binding offer for 90 days. The cover letter should also summarize the key points of the consulting firms' interests, qualifications, and pertinent areas of expertise.
2. **Key Staff:** Identify a single point of contact (project manager) and all key team members, including relevant experience. Provide an organization chart of how the key staff is structured within the organization and include all specialty sub-consultants that would be expected to be utilized on the project.
3. **Scope of Services:** Description of the services to be offered by the firm and those offered by subcontractors typically used by the firm. The proposal must indicate which services are provided by whom.
4. **Relevant Experience:** List projects completed by the Consultant relevant to the scope of services contained herein that have been completed in the last five years. Discuss

- the firm's uniqueness to best perform these on-call services for the city.
5. **Current Clients:** Provide a list of all clients doing business with the Consultant in the past 12 months.
 6. **Billing Structure:** Provide a list of hourly billing rates for each proposed team member. Include all direct and indirect expenses and transportation fees.
 7. **Statement of Proposed Modification:** Attached are the City's standard Professional Services Agreement (PSA) and insurance requirements. If the respondent has any modifications to the standard PSA or Insurance requirements, provide a statement of proposed modifications and/or exceptions to the PSA. Any modifications not included in this Statement may not be considered by the city.
 8. **Insurance:** Provide a summary of insurance coverage including public liability, property damage, workers compensation, automobile, and professional liability. An example of the city's insurance requirements is provided in Exhibit B.
 9. **References:** Provide three (3) client references relevant to the scope of services listed herein. Include names, titles, and current contact information.

Appendices

Information considered by proposers to be pertinent to this project, and which has not been specifically solicited in any of the aforementioned sections, may be placed in a separate appendix section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

Non-Discrimination Certification

By responding to this RFP, proposers represent that they and their subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status.

Addenda

Any changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting agreement. The City of Dunsmuir will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of verbal instructions. Proposers are responsible for checking the City of Dunsmuir website <https://www.ci.dunsmuir.ca.us/news> for any and all written Addenda related to this RFP. The City of Dunsmuir will not distribute Addenda to a mailing list of interested proposers.

Submittal Procedures

Proposals must be submitted at or before 4:00 P.M. on May 3, 2024. An electronic copy of the proposal in PDF format should be delivered by email to the following address: citymanager@ci.dunsmuir.ca.us with the email subject: City of Dunsmuir On-Call Planning and Environmental Proposal

Proposals received after the date and time specified above will not be considered.

The City of Dunsmuir reserves the right to:

1. Accept, reject any or all submittals, or any item or part thereof;
2. Issue subsequent Requests for Proposals;
3. Alter the Selection Process Dates;
4. Remedy technical errors in the RFP process;
5. Request additional information from Proposers and investigate the qualifications of all firms under consideration;
6. Confirm any part of the information furnished by a Proposer;
7. Obtain additional evidence of managerial, financial, or other capabilities;
8. Approve or disapprove the use of particular subcontractors;
9. Negotiate with any, all, or none of the Proposers;
10. Award a contract to one or more Proposers;
11. Accept other than the lowest-priced Proposal;
12. Solicit best and final offers from all of some of the Proposers;
13. Withdraw this RFP at any time without prior notice, and the City of Dunsmuir makes no representations that any contract will be awarded to any Proposer responding to this RFP;
14. Waive informalities and irregularities in Proposals or the selection process.

Confidentiality of Proposals

To the extent permitted by law, proposals received shall remain confidential until the contract, if any, resulting from this RFP has been finally executed. Thereafter, all information submitted in response to this request shall be deemed public record. In the event that the Proposer desires to claim portions of its proposal as exempt from disclosure under the California Public Records Act, it is incumbent on the Proposer to clearly identify those portions with the word "confidential" printed on the lower right-hand corner of the page. City of Dunsmuir will consider a Proposer's request for exemption from disclosure; however, the City of Dunsmuir will make its decision based on applicable laws. An assertion by the Proposer that the entire proposal is exempt from disclosure will not be honored. Firms are advised that the City of Dunsmuir does not wish to receive confidential or proprietary information and those proposers are not to supply such information except when it is absolutely necessary. If any information or materials in any proposal submitted are labeled confidential or proprietary, the proposal shall

include the following clause:

[Legal name of proposer] shall indemnify, defend and hold harmless the City of Dunsmuir, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including attorneys' fees awarded under the California Public Records Act (Government Code § 6250 et seq.) arising out of, concerning or in any way involving any materials or information in this proposal that [legal name of proposer] has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.

Pre-Contractual Expenses

The City of Dunsmuir shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by Proposer in:

1. Preparing its proposal in response to this RFP;
2. Submitting that proposal to the City of Dunsmuir;
3. Negotiating with the City of Dunsmuir any matter related to this proposal; or
4. Any other expenses incurred by Proposer prior to date of award, if any of the Agreement.

Insurance and Agreement Provisions

The Proposer must satisfy the insurance requirements of the City (Exhibit B). Objections to any provisions must be identified in the proposal. If no objections are made, this will signify that the insurance requirements and agreement are acceptable as written. Unless otherwise authorized by the City of Dunsmuir, the selected consultant will be required to execute an agreement with the City of Dunsmuir for the services requested. If agreement on terms and conditions acceptable to the City of Dunsmuir cannot be achieved, or if, after reasonable attempts to negotiate such terms and conditions, it appears that an agreement will not be possible, as determined at the sole discretion of the City of Dunsmuir, the City of Dunsmuir reserves the right to retract any notice of intent to award and proceed with awards to other consultants, or not award at all.

Lobbying

Any consulting firm submitting a proposal, or a party representing a firm, shall not influence or attempt to influence any member of the evaluation committee, any member of a city council within the City of Dunsmuir, or any employee of the City, with regard to the acceptance of a proposal. Any party attempting to influence the RFP process through ex-parte contact shall be subject to rejection of their proposal.

Section 3. Evaluation and Award

An Evaluation Committee will review all proposals received. The committee includes City of Dunsmuir staff and may include outside personnel. The City of Dunsmuir staff will conduct an initial review of the proposals for general responsiveness and compliance with the requirements of this RFP. Proposals failing to satisfy the requirements or which are inadequately responsive will not be considered.

After the initial responsiveness review, the committee members will read the proposals separately then convene to discuss and review the written proposals. Each member of the selection panel will then evaluate each proposal using the criteria identified below to arrive at a "proposal score" in the range of 0 to 100 for each proposal. A list of top ranked proposals will be developed based upon the totals of each committee member's score for each proposal.

The Evaluation Committee will review all proposals submitted on time. The committee will evaluate the proposals and select based on the following criteria:

- Demonstrated understanding of the requested work and responsiveness to the request for proposal.
- Firm expertise and competence including experiences processing current development projects, experience with CEQA and complex EIR's.
- Experience with advanced planning such as General Plan, Master Plans, Specific Plans, and Housing Element Updates.
- Excellent written and verbal communication skills.
- Professional qualifications and experience of individuals likely to be assigned to the city.
- Proposed compensation rates
- Reference recommendations

During the evaluation period, the City of Dunsmuir may interview some or all of the proposing firms. The interview may consist of a short presentation by the Proposer, after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

The City of Dunsmuir reserves the right to select a consultant based solely on written submittals and not convene oral interviews. If oral interviews are necessary, the selected Proposer will be requested to make a formal presentation. The Evaluation Committee will recommend one consultant following any interviews. The Committee's recommendation will be reviewed by the City Manager before proceeding to the City Council for action.

Selection will be based on a "best value" analysis. The City of Dunsmuir reserves the right to select the proposal which in its sole judgment best meets the needs of the City of Dunsmuir.

Award

Acceptance of a proposal or other material during the selection process does not constitute a contract and does not obligate the City of Dunsmuir to award funds. Funding is subject to final contract approval by the City Council of the City of Dunsmuir. The City of Dunsmuir reserves the right to reject any and all responses without penalty and to act in the best interest of the City of Dunsmuir. The City of Dunsmuir will evaluate the proposals received and will submit the proposal considered to be the most competitive to the City, for consideration and selection. The City of Dunsmuir may also negotiate contract terms with the selected Proposer prior to award, and expressly reserves the right to negotiate with several Proposers simultaneously and , thereafter, to award a contract to the Proposer offering the most favorable terms to the City of Dunsmuir.

Negotiations may or may not be conducted with Proposers; therefore, the proposal submitted should contain Proposer's most favorable terms and conditions, since the selection and award may be made without discussion with any Proposer.

Notification of Award

Proposers who submit a proposal in response to this RFP shall be notified by email regarding the firm who will be recommended for award of the contract. Such notification will be made at least seven (7) days before the date the contract is awarded.

Section 4 Protests

Bid protests for contracts awarded for professional services shall be submitted and responded to in accordance with the requirements noted in Exhibit C.

Section 5 Tentative Schedule

The following is a tentative project schedule and milestone requirements for the project. The City of Dunsmuir reserves the right to adjust the schedule.

Issued: April 5, 2024

Proposals Due: May 3, 2024 at 4:00 PM PST

Award Approval: June 20, 2024 City Council Meeting

AGREEMENT FOR PROFESSIONAL PLANNING SERVICES

XXXXXXX

On-Call Planning and Environmental Services

1. PARTIES:

The parties to this contract are the City of Dunsmuir, a municipal corporation of the State of California (the City) and XXXXXXX (the Planning Consultant).

This AGREEMENT is made and entered into on this 20th day of June 2024.

2. SCOPE OF SERVICES:

- (a) The on-call planning and environmental services to be provided by Planning Consultant are described in Exhibit "A" which is made a part of this Agreement as if it were fully set forth at length here at.
- (b) Planning Consultant represents and warrants that all Planning Consultant services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in paragraph (a).
- (c) Planning Consultant shall furnish all equipment, supplies, and facilities necessary and convenient to perform properly the services required herein. Without limitation, Planning Consultant shall supply any needed computer equipment.
- (d) Work Assignments. Upon presentation of a request for an estimate to perform work, Planning Professional shall provide a proposal that includes a good faith estimate of the scope, charges, and schedule for the assignment. Work shall be undertaken only as specifically authorized in writing by the City. City shall be afforded the opportunity to revise project budget, scope, or make other changes City desires before charges for work have exceeded the original cost estimate and authorization. Planning Consultant retains the right to reject specific assignments and rejection of an assignment does not terminate this Agreement.
- (e) Litigation Support. Planning Consultant shall receive compensation for preparing for and/or appearing in any litigation at the request of CITY, except: (1) if such litigation costs are incurred by the Planning Consultant in defending its work or services or those of any of its sub-consultants; or (2) as may be required by the indemnification requirements of the Planning Consultant. Compensation for litigation services requested by the CITY shall be paid at a mutually agreed upon rate and/or at a reasonable rate for such services.

3. PAYMENT:

- (a) Payment for services. The City shall pay for services performed in accordance with this contract according to the payment and fee schedule contained in Exhibit B.

No contract price changes shall be made during the term of this Agreement without City's prior written approval. Any additional services requested in writing that is not listed or covered in this Agreement will be extra work, less any amounts deemed to be a setoff and shall be payable at either a negotiated fixed fee or, if time and materials, at the established rates and expenses.

The amount of the request for payment which is approved by City shall be paid to the Planning Consultant, less the amount of all previous payments and less all valid setoffs.

Valid setoffs shall include:

- i. The cost to correct defective services which has not been remedied by the Planning Consultant; or
- ii. Claims against the Planning Consultant or any of its subcontractors for services or materials furnished; and or
- iii. Failure of Planning Professional to make proper payments to any subcontractors, employees, suppliers or materials; and or
- iv. Costs resulting from default by Planning Consultant on any other term or condition of this Contract.

City reserves the right to withhold final payment to the extent that:

- i. There are defective services not remedied by the Planning Consultant; or
- ii. There are claims against the Planning Consultant or any of its subcontractors for labor or materials furnished; or
- iii. The Planning Professional has not made proper payments to subcontractors, employees or materialmen; or
- iv. The Planning Professional has defaulted on any other term or condition of this Agreement.

The acceptance by the Planning Consultant of the final payment shall constitute a waiver of all claims by the Planning Consultant except those previously made in writing and still unsettled.

No services shall be performed by Planning Consultant in excess of the total contract price without City's prior written approval.

Planning Consultant shall maintain accounting records including the following information: names and titles of employees or agents, types of services performed, and times and dates of all services performed in connection with this Agreement which is billed on an hourly basis.

Planning Consultant shall maintain complete and accurate records with respect to the cost, expenses and receipts and other information required by City for any services provided where compensation is on the basis of hourly rates, subcontractor costs or other direct costs. Planning Consultant shall maintain accurate records on services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.

At any time during the term of this Agreement, City may request that Planning Consultant perform "extra work." As used herein, "extra work" means any services that is determined by City to be necessary for the proper completion of the project, but which the parties hereto did not reasonably

anticipate would be necessary at the time of the execution of this Agreement. Planning Consultant shall not perform, nor be compensated for, extra work without City's prior written approval and authorization.

- (b) Reimbursement of expenses. Planning Consultant will be reimbursed for actual, reasonable and necessary expenses incurred in the performance of services in accordance with the fee schedule included in Exhibit B. Under no circumstances shall Planning Consultant charge City for Planning Consultant's normal overhead such as the preparation of Planning Professional's and subcontractor's invoices for services performed pursuant to this Agreement. The hourly compensation provided for in this Agreement shall include all overhead, markups and personal transportation costs.
- (c) Maximum payment. The maximum payment under this contract for services incurred outside of an approved specific project scope and, if authorized, reimbursement of expenses, shall not exceed Twenty-Five Thousand and no cents (\$25,000.00) payable in dollars of the United States of America in one fiscal year. The fiscal year begins July 1 and ends June 30.
- (d) Invoices. Planning Consultant shall submit monthly itemized billings to City's Administrator, allocated by Project and/or Task Area according to Exhibit A, Scope of Services and in a form acceptable to City, as well as any documentary evidence required by City. City's Administrator shall review the invoice for accuracy. City shall pay to Planning Consultant all charges determined to be accurate by City's Administrator in the regular course of business. Payments are subject to a final audit upon completion of services or other termination of this contract.

Planning Consultant shall submit monthly invoices to City describing the services performed during the preceding month and charged in accordance with the hourly rates set out in Exhibit "B" attached hereto and incorporated herein by this reference. The Planning Consultant shall provide separate invoices for each specific project and grant task at the request of the Administrator. All invoices shall be itemized, and state that such services were performed and were necessarily incurred. The itemized statement shall specifically set forth compensation and expenses by assigned task, the total compensation and expenses for each task billed as of the date of the statement, and the total billing for all compensation and expenses from contract inception to the date of the statement. City reserves the right to require substantiation of any item of claimed expense.

Overly generalized listing of task descriptions are not acceptable, rather, Planning Consultant shall provide a detailed description which will provide a meaningful record to an independent auditor reviewing task description. Any work product or memoranda or other written material described in the entries shall be produced for City as requested.

Billings under this agreement shall not be provided in more than six-minute increments and shall represent the devotion of a full six minutes before such an increment is billed. Under no circumstances shall Planning Consultant use "block billing" procedures, wherein a list or series of activities is done each day with only an aggregate amount of time specified. Instead, Planning Consultant shall provide a fully detailed specific entry for each separate task and subtask reflecting the time for such task or subtask.

The City shall act to approve or deny each invoice submitted by Planning Consultant within thirty days from receipt of the invoice. Payment shall be mailed to Planning Consultant within fourteen days of City's approval.

- (e) Audit of Records. Planning Consultant shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the City or establishing the basis for an invoice. All such records shall be clearly identifiable. Planning Consultant shall allow City Administrator to inspect, examine, copy and audit such records during regular business hours upon 24 hours notice.

In addition to the accounting records, Planning Consultant shall allow City the right to examine and audit all records, and to make transcripts thereof as necessary, allow inspections of all work, data, documents, proceedings and activities relating to this Agreement. Such records, together with supporting documents shall be maintained for a period of three (3) years after receipt of final payment or for so long as required by any grant funding this agreement.

4. TIME FOR PERFORMANCE:

- (a) Planning Consultant will perform the services according to a scope agreed to by both parties. Performance under this Agreement shall commence immediately upon City's issuance of a Notice to Proceed and shall continue for a period of five (5) years with the option to extend the contract for two (2) years. Planning Consultant shall perform diligently and continuously to complete all services set forth in the Scope of Services. In the event that Planning Consultant fails to strictly adhere to the times for performance as hereinafter provided, City may in its sole and absolute discretion terminate this Agreement.

If additional funding is not authorized to pay for professional services beyond those services authorized by the Notice to Proceed in this Agreement, City and Planning Consultant shall negotiate modifications to the schedule to accommodate the availability of funds. If the schedule calls for the services to be performed in phases or discrete increments, Planning Consultant shall not proceed from one phase or increment to the next without written authorization from the Contract Administrator. Unless there are subsequent modifications to the schedule, the Planning Consultant will complete all services by as shown on the schedule. In the event of a dispute between the parties concerning the interpretation of this Agreement, Planning Consultant shall not be excused from any scheduled completion date provided for by this Agreement, but shall diligently proceed with all Services to be performed. No Services shall be delayed or postponed by Planning Consultant, pending resolution of any disputes with the City unless otherwise agreed to by both parties in writing.

The services shall be performed on a continuous, ongoing basis. Planning Consultant will meet with the Contract Administrator as needed to evaluate workload and schedule upcoming activities and staffing needs. The Planning Consultant and Contract Administrator will set mutually acceptable timing requirements at the time the work to be performed is assigned. Planning Professional shall submit all requests for extensions of time for performance in writing to the Contract Administrator no later than ten calendar days after the start of the condition allegedly causing the delay, and not later than the date on which performance is due. Contract Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond the control of the Planning Consultant.

For all time periods not specifically set forth in this Agreement, the Planning Consultant shall respond in the most expedient and appropriate manner under the circumstances, including but not limited to telephone, fax, hand delivery, email, or mail.

- (b) Extension of time for unforeseen circumstances. In the event that the Planning Consultant is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Planning

Consultant's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, except strikes, lockouts, or work slowdown or stoppage of Planning Consultant's employees or subcontractors, acts of god, such as floods or earthquakes, and electrical blackouts or brownouts, Planning Consultant shall inform the Contract Administrator of the additional time required to perform the work and the Contract Administrator may adjust the schedule.

5. STANDARD OF PERFORMANCE:

- (a) All services shall be performed by Planning Consultant and each of its employees in accordance all applicable legal requirements and shall meet and conform with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of Planning Consultant's profession currently practicing design and construction management services in California. By delivery of completed work, Planning Consultant certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws, specific funding program requirements, and the professional standard of care in California.

City has relied upon the professional training and ability of Planning Consultant to perform the services and Scope of Services hereunder as a material inducement to enter into this Agreement. Planning Consultant shall therefore provide properly skilled professional and technical personnel to perform all services required by it to be performed under this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Planning Consultant to perform Services pursuant to this Agreement, Planning Consultant shall remove any such person immediately upon receiving written notice from City of its desire for removal of such person or persons.

All compensation payable to Planning Consultant hereunder shall be paid by City. Planning Consultant acknowledges and recognizes that Services under this Agreement have its source from tax dollars from tax payers of the State of California and that, given this fact, a heightened duty of care exists in Planning Consultant to ensure that Planning Consultant scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying forth the goals of and completing the pursuant to this Agreement

- (b) Planning Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state, and local laws and regulations, and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, and other similar information provided by the City relating to site, local, or other conditions is not warranted or guaranteed, either expressly or implied, by the City.
- (c) Planning Consultant's responsibilities under this section are shall not be delegated. Planning Consultant shall be responsible to the City for acts, errors, or omissions of Planning Consultant's subcontractors.
- (d) Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by the City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this contract and determining whether the Planning Consultant is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not does not relieve the Planning Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Planning Consultant.

6. INDEPENDENT CONTRACTOR:

Planning Consultant is an independent contractor. Neither Planning Consultant nor any of Planning Consultant's officers, employees, agents, or subcontractors, if any, is an employee of the City by virtue of this contract or performance of any work under this contract. Planning Consultant is not a designated employee within the meaning of the Political Reform Act because Planning Consultant:

- i. Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendations, or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation, or counsel.
- ii. Does not make or participate in the making of any governmental decisions regarding approval of a rate, rule, or regulation, the adoption or enforcement of laws;
- iii. Does not make or participate in the issuance, denial, suspension or revocation of permits, licenses, applications, certificates, approvals, orders, or similar authorization or entitlement;
- iv. Does not make or participate in authorizing the City to enter into, modify, or renew a contract;
- v. Does not make or participate in granting City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
- vi. does not make or participate in granting City approval to a plan, design, report, study, or similar item;
- vii. Does not make or participate in adopting, or granting City approval of, policies, standards, or guidelines for the City or for any subdivision thereof.
- viii. Does not serve in a staff capacity with the City and in that capacity participate in making a governmental decision or otherwise perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code under Government Code Section 87302.

In the event the City officially determines that Planning Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Planning Consultant shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk.

7. SUCCESSOR AND ASSIGNS:

Planning Consultant shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this contract without the express written consent of the City in each instance.

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Planning Consultant's duties be delegated, without the express written consent of the City. Any attempt to assign or delegate this Agreement without the express written

consent of City shall be void and of no force or effect. Consent by City to one assignment shall not be deemed to be consent to any subsequent assignment.

8. SUBCONTRACTORS:

- (a) City and Planning Consultant recognize and acknowledge that Planning Consultant is hereunder employed in a position where Planning Consultant will be rendering services of a special, unique, unusual and extraordinary character requiring extraordinary ingenuity and effort by Planning Consultant. The parties hereto recognize that a substantial inducement to City for entering into this Agreement is the reputation, experience, and competence of Planning Consultant. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Planning Consultant's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment shall not be deemed to be consent to any subsequent assignment. Planning Consultant shall provide qualifications of assignees for review by City, which will not unreasonably withhold consent. Planning Consultant shall not subcontract any portion of the work to be performed without the prior written authorization of City. If City consents to said subcontract, Planning Consultant shall be fully responsible to City for all acts or omissions of subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- (b) When subcontracting of Services is permitted, Planning Consultant shall pay subcontractor within 45 days of receipt of payment by City for work performed by a subcontractor and billed by the Planning Consultant. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Planning Consultant to use subcontractors for performance of any service under this contract.
- (c) The City is an intended beneficiary of any work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

9. PLANNING CONSULTANT'S EMPLOYEES:

- (a) The key personnel to perform the services shall be assigned at the beginning of the project and shall remain assigned through completion of the services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to City approval.
- (b) Immigration Reform and Control Act of 1986. Planning Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all of Planning Consultant's officers, employees, agents and subcontractors that are included in this contract.
- (c) Limitation of City Liability. The payment made to Planning Consultant pursuant to this contract shall be the full and complete compensation to which Planning Consultant and Planning Consultant's officers, employees, agents, and subcontractors are entitled for performance of any work under this contract. Neither Planning Consultant nor Planning Consultant's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Planning Consultant. The City shall not

be required to pay any workers' compensation insurance on behalf of Planning Consultant.

- (d) Indemnification for Employee Payments. Planning Consultant agrees to defend and indemnify the City for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which the City may be required to make on behalf of Planning Consultant or any employee of Planning Consultant, or any employee of Planning Consultant construed to be an employee of the City, for work done under this contract. This is a continuing obligation that survives the termination of this contract.

10. FAIR EMPLOYMENT PRACTICES:

- (a) Civil Rights Act. Planning Consultant agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted.
- (b) Indemnification for Employee Behavior. To the fullest extent permitted by law and without limitation by the provisions of Section 19 relating to insurance, the Planning Consultant shall also indemnify, defend and hold harmless the City, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Planning Consultant or any of the Planning Consultant's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractors of the Planning Consultant or its subcontractors, the Planning Consultant shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractors. The provisions of this Section survive completion of the services or termination of the Contract.

11. WORKPLACE CONDUCT AND BEHAVIOR:

Planning Consultant and Planning Consultant's officers, employees, agents and subcontractors shall comply with a Substance-free Work Place Policy, and other rules and regulations governing work place safety, conduct, and behavior, for any portion of the work performed on the premises of the City or using City facilities or equipment.

12. OWNERSHIP OF WORK PRODUCT:

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the City. Planning Consultant agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Planning Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work. In return for Planning Consultant's relinquishment of ownership, CITY agrees to waive any claim against Planning Consultant and indemnify and hold Planning Consultant harmless from any claim or liability for injury or loss arising from unauthorized re-use of Planning Consultant's instruments of service

by CITY.

13. DELIVERABLES:

All printed and digital material, if any, required to be submitted by Planning Consultant as a draft or final deliverable and produced using computer software shall include, as part of that deliverable, copies of all pertinent computer files on flash drive or online dropbox software. Computer files shall use MS Word© for documents, and MS Excel© for spreadsheets and estimates, ESRI products for mapping projects, and AutoCAD © .dwg for drawing files. At the conclusion of the project, electronic copies of final (or as-built) plans and specifications shall be provided on a flash drive in native and Adobe Acrobat .pdf formats for the City's permanent records.

14. CHANGES IN WORK:

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Administrator and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Administrator may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Planning Consultant or ordered by the Contract Administrator, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

15. CONFIDENTIALITY:

- (a) Confidential Nature of Information. Planning Consultant shall treat all information obtained from the City in the performance of this contract as confidential and proprietary to the City. Planning Consultant shall treat all records and work product prepared or maintained by Planning Consultant in the performance of this contract as confidential.
- (b) Limitation on use and disclosure. Planning Consultant agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Planning Consultant's scope of work. Planning Consultant will not disclose any information prepared for the City, or obtained from the City or obtained as a consequence of the performance of work to any person other than the City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the City.
- (c) Security plan. If requested by the Contract Administrator, Planning Consultant shall prepare a security plan to assure that information obtained from the City or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Planning Consultant shall advise the City of any request for disclosure of information or of any actual or potential disclosure of information.
- (d) Survival. Planning Consultant's obligations under this paragraph shall survive the termination of this contract.

16. PROHIBITED INTEREST:

No official or employee of the City who is authorized in such capacity on behalf of the City to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this contract, shall

become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the City who is authorized in such capacity and on behalf of the City to exercise any executive, supervisory, or similar functions in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof

Planning Consultant agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Planning Consultant, to solicit or secure this contract, and that Planning Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this contract. For breach or violation of this provision, the City shall have the right to terminate this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

17. CONFLICT OF INTEREST:

Planning Consultant shall not make or participate in making or in any way attempt to use Planning Consultant's position to influence a governmental decision in which Planning Consultant knows or has reason to know Planning Consultant has a direct or indirect financial interest other than the compensation promised by this contract. Planning Consultant will not have such interest during the term of this contract. Planning Consultant will immediately advise the City's Administrator and the City Attorney if Planning Consultant learns of a financial interest of Planning Consultant's during the term of this contract. If Planning Consultant's participation in another City project would create an actual or potential conflict of interest, in the opinion of the City, the City may disqualify Planning Consultant from participation in such other project during the term of this Contract.

18. INDEMNIFICATION:

To the fullest extent permitted by law, whenever Planning Consultant and Planning Consultant's Related Parties are performing services Planning Consultant shall indemnify, defend (at Planning Consultant's sole cost and expense and with legal counsel approved by City, which approval shall not be unreasonably withheld), protect and hold harmless City and City's Related Parties (collectively, the "Indemnified Parties"), from and against any and all Liabilities of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner relate to (directly or indirectly), arise out of, or pertain to the negligence, recklessness, or willful misconduct of Planning Consultant's Activities, but this indemnity does not apply to liability for damages arising from the negligence, active negligence, or willful acts of the City and City's Related Parties provided such active negligence is determined by agreement between parties or by the findings of a court of competent jurisdiction. Instances where Indemnified Parties are shown to have been actively negligent and where Indemnified Parties active negligence accounts for only a percentage of the liability involved, the obligation of Planning Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of Indemnified Parties. Planning Consultant's obligations under this section apply regardless of whether or not such Liabilities was caused in part or contributed to by Indemnified Parties.

Without limiting Planning Consultant's obligation to indemnify City upon City's request, Planning Consultant shall indemnify, hold harmless, protect and defend with legal counsel acceptable to the City at Planning Consultant's sole cost, City from and against all Liabilities, paid, incurred or suffered by, or asserted against City in a judicial, administrative or regulatory forum or otherwise, whether well founded or not, for regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of the Planning Consultant or Planning Consultant's Related Parties, any of Planning

Consultant's Activities.

Should conflict of interest principles preclude a single lawyer from representing both Planning Consultant and Indemnified Parties, or should City find Planning Consultant's legal counsel unacceptable, then Planning Consultant shall reimburse Indemnified parties for their costs of defense, including without limitation, reasonable and necessary attorney's fees, expert fees and all other costs and fees of litigation. Planning Consultant shall promptly pay any final judgment rendered against Indemnified Parties covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

For purposes of defense and indemnification relating to this Agreement:

- i. "Liabilities" means liabilities, lawsuits, claims, judgments, demands, clean-up orders, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss, penalties and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorney's fees (whether City's or Planning Consultant's staff attorneys or outside attorneys) and court costs, whether under state or federal law except liabilities caused by the sole negligence or willful misconduct of the indemnified party.
- ii. "City's Activities" means liability for death or bodily injury to persons, injury to property, or other loss arising out of actions that are the sole negligence, willful misconduct or defects in design furnished by City or arising from the active negligence of City.
- iii. "City and City's Related Parties" means City and City's elected officials, officers, volunteers, representatives, partners, designees, attorneys, employees, agents, successors and assigns, and any lender of City with an interest in the Project that is the subject of this contract.
- iv. "Planning Consultant and Planning Consultant's Related Parties" includes Planning Consultant and its respective officers, directors, shareholders, members, partners, agents, employees, subcontractors, Planning Consultants, licensees, invitees, guarantors or affiliates. "Affiliates" means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Planning Consultant, where construction or interpretation of "control" shall be governed by Rule 144 of the Securities Act of 1993. Planning Consultant shall use best efforts, or cause such persons to use best efforts, to provide City's legal counsel all reasonably necessary information relevant to such persons, including proper and legal corporate names and relationship (or lack thereof) to Planning Consultant's articles of incorporation, certificates of good standing, and other documentation related directly or indirectly to alleged liabilities.
- v. "Planning Consultant's Activities" means any actions or omissions of Planning Consultant or Planning Consultant's Related Parties in the performance of this Agreement directly or indirectly arising from Planning Consultant or Planning Consultant's Related Parties Scope of Services and as set out in as well as any breach of representation or warranty of Planning Consultant set forth in this Agreement, including Exhibit A and Exhibit B, of which are hereby incorporated in this Agreement.

The provisions of this Section shall survive termination of this Agreement and Sections relating to insurance does not limit its provisions.

19. INSURANCE

Planning Consultant shall procure and maintain during the period of performance of this contract and for 24 months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section and Exhibit "C", attached hereto and made a part of this Agreement as if it were fully set forth at length at this point. These policies shall be primary insurance as to the City so that any other coverage held by the City shall not contribute to any loss under Planning Consultant's insurance.

20. ACCIDENT REPORTS:

Planning Consultant shall immediately report (as soon as feasible, but not more than 24 hours) to the Contract Administrator and City's Risk Administrator any accident or other occurrence causing injury to persons or property during the performance of this Contract. If required by the City's Risk Administrator, the report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

21. COVENANT AGAINST CONTINGENT FEES:

Planning Consultant agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Planning Consultant, to solicit or secure this contract, and that Planning Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this contract. For breach or violation of this provision, the City shall have the right to terminate this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. TERMINATION OR ABANDONMENT:

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, tsunamis, other "acts of God", war, civil insurrection, riots, and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by Planning Consultant's employees or directed at Planning Consultant is not an excuse from performance and Planning Consultant shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events. In the case of labor unrest or job action directed at a third party over whom Planning Consultant has no control, the inability of Planning Consultant to provide Agreement Services due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Planning Consultant's employees while providing Agreement Services to minimize any confrontation with pickets shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Planning Consultant's cooperation in providing Services at different times.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

City's Rights. The City has the right to terminate or abandon any portion or all of the work by giving 10 days written notice. Upon receipt of a notice of termination, Planning Consultant shall perform no further

work except as specified in the notice. Before the date of termination, Planning Consultant shall deliver to City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered. The City shall pay Planning Consultant for services performed in accordance with this contract before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by the City and Planning Consultant for the portion of work completed in conformance with this contract before the date of termination. In addition, the City will reimburse Planning Consultant for authorized expenses incurred and not previously reimbursed.

The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

In addition to any and all other legal or equitable remedies, in the event that Planning Consultant, for any reason whatsoever, fails, refuses or is unable to perform Services which it is required by the Agreement to perform, at the time and in the manner provided in this Agreement, then City shall have the right, but not the obligation, to cause to be performed such Services with other personnel.

The Services of Planning Consultant may be immediately terminated, without notice, at any time prior to the expiration of the term of this Agreement by:

1. The occurrence of circumstances that make it impossible and impractical for the business of City to be continued;
2. The death of the Planning Consultant or City;
3. The loss of the Planning Consultant or City of legal capacity;
4. The loss by the City or Planning Consultant of the legal capacity to contract;
5. Habitual neglect by the Planning Consultant of Planning Consultant's duties, unless waived by the City;
6. Continued incapacity on the part of the Planning Consultant to perform his/her duties, unless waived by the City;
7. If the City ceases the operation of all its operations in this area, then this Agreement shall terminate as of the effective date of the discontinuance of such operation.

Planning Consultant's Rights. Planning Consultant, if Planning Consultant is not in default or breach, may terminate Planning Consultant's obligation to provide further services under this contract upon 30 days' written notice only in the event of a material default by the City, which default has not been cured within 30 days following the written notice.

23. SUCCESSORS OR ASSIGNS:

All terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

24. DAMAGE OR LOSS OF EQUIPMENT OR FACILITIES:

- (a) General Obligation. Planning Consultant shall pay to the City the replacement cost of any equipment or repair cost of any facilities provided by the City for Planning Consultant's use in performance of services that is lost or damaged by Planning Consultant or Planning Consultant's officers, employees, agents, or subcontractors.
- (b) Keys. During the term of the contract, Planning Consultant may be issued keys to City facilities in order to perform the scope of work. Keys shall not be loaned, duplicated, or given to anyone not authorized to have the keys. Planning Consultant will sign for each key and each key will be returned to the project Administrator when access to that area is no longer authorized, or at the end of the contract term, whichever is applicable. Should keys become lost or stolen, Planning Consultant shall immediately notify the Contract Administrator. A charge will be assessed for all expenses incurred by the City, including the replacement of locks, lock cores, keys, and other materials necessary to ensure the City security level is returned to the same level existing prior to the loss of the key(s).

25. ELECTRONIC COMMUNICATIONS:

During the course of this contract, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Planning Consultant and the City acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Planning Consultant and the City view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Planning Consultant agrees to update its system with the software vendor's most current releases at regular intervals.

Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

26. LAWS AND VENUE:

The laws of the State of California govern this contract and disputes arising out of or relating to the contract or the parties' relationship. Any action or proceeding arising out of or relating to the contract or the parties' relationship shall be brought in a state court situated in Siskiyou County, State of California unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395. Any action or proceeding arising out of or relating to the contract or the parties' relationship brought in a federal court shall be in the U.S. District Court, Northern District of California. This Agreement shall be construed in accordance with the laws of the State of California.

27. ADMINISTRATION:

- (a) Planning Consultant's business identification. Planning Consultant's agent for service of process is [Name], [Address]. Planning Professional is a California corporation composed of duly California

licensed professionals. Planning Consultant's California Secretary of State's identification number is C2460874. Planning Consultant's Federal ID Number or Social Security Number under which payments will be reported on a W-9 before the first payment under this agreement is processed.

Planning Consultant's contact information is:

Address:

Phone:

Fax:

Email:

- (b) City's Representative. The City's representative for administration of this contract is Dustin Rief, City Manager or her designee, who is the designated Contract Administrator or City Representative. The City may change the Contract Administrator at any time upon notice to the Planning Consultant.
- (c) Planning Consultant's Representative. The Planning Consultant's representative for administration of this contract is Jason Drew who is designated as the Project Administrator. The Planning Consultant may change the Project Administrator upon written notice to and approval by the Contract Administrator.
- (d) Notices. Any notice or instrument required to be given or delivered by law or this contract shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

City:

City of Dunsmuir Attn: City Manager
5915 Dunsmuir Ave,
Dunsmuir, CA 96025

With a copy to:

Dunsmuir City Attorney
[Address]

Planning Consultant:

[Contact Name]

[Address]

Either party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

- (e) Routine Administrative Communications. Routine administrative communication required to be in writing may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Planning Consultant and Contract Administrator.

28. ADVICE OF COUNSEL:

The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

29. INDEPENDENT REVIEW:

Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

30. TIME:

Time is of the essence in this contract. Any reference to days means calendar days unless otherwise specifically stated.

31. ASSIGNMENT OF ANTI-TRUST CLAIMS:

The Planning Consultant offers and agrees to assign to the City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to the contract. This assignment shall become effective at the time the City tenders final payment to Planning Consultant, without further acknowledgment by the parties. The Planning Consultant shall have the rights set forth in Sections 4553 and 4554 of the Government Code.

32. TAXES:

The Planning Consultant shall pay all applicable federal, state, and local excise, sales, business license, consumer use, and other similar taxes required by law for the execution of the work.

33. SEVERABILITY.

If any provision of this Agreement is held to be unenforceable, the remaining provisions of this Agreement are severable and shall remain valid and enforceable.

34. AMENDMENTS.

This Agreement may be amended at any time only by mutual written consent of the parties.

35. WAIVER.

A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such

waiver unless it is in writing and signed by the party so waiving.

36. COMPLETENESS OF INSTRUMENT.

This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

37. SUPERSEDES PRIOR AGREEMENTS.

It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

38. ATTORNEY'S FEES.

If any action at law or in equity, excepting an action for declaratory relief, is brought to enforce provisions of this Agreement by reason of the alleged failure of the other to perform or keep any provision or this Agreement to be performed or kept, the prevailing party in such action or proceeding (including appeal) shall be entitled to recover court costs and reasonable attorney's fees (including reasonable value of services rendered by attorney's employed by City) which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled. As used herein, the "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

39. COMPLIANCE WITH LAWS.

Planning Consultant's services hereunder shall be conducted in accordance with all the laws, ordinances, rules and regulations applicable to such business as set forth by the City, State of California, and the United States government. Planning Consultant agrees to indemnify City against any damages, expenses, or price reductions under this Agreement resulting from Planning Consultant or Planning Consultant's lower-tier subcontractors' failure to comply with the above laws and regulations.

40. COUNTERPARTS.

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

41. OTHER DOCUMENTS.

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

42. AUTHORITY.

All parties to this Agreement warrant and represent that they have the power and authority to enter into this

Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, estates, or firms represented or purported to be represented by such entity(s), person(s), estate(s), or firm(s) and that all formal requirements necessary or required by any stated and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

“Planning Consultant”
[abc]

“City”
City of Dunsmuir, A Municipal Corporation

[Name]
[Title]

Dustin Rief
City Manager

ATTEST:

ATTEST:

Wendy Perkins
Deputy City Clerk

Exhibit A: Scope of Work

Exhibit B: Fee Schedule

Exhibit C: Insurance

EXHIBIT "A"

Scope of Work

EXHIBIT "B"

Fee Schedule

EXHIBIT "C"

Consultant Insurance

Insurance Requirements for Professional Services

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

(Not required if consultant provides written verification it has no employees)

1. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant’s profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the **Contractor’s insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the

Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

NOTE to Agencies: Please see the section on The Myth of "Following Form" Excess Limits Insurance Policies for additional explanatory information on this very common Excess policy problem that needs to be verified and corrected.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 [fill in the amount for your comfort level for the specific Contractor and job – it could be much higher, or in the case of a very small Contractor, you might want it lower] unless approved in writing by Entity. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Entity may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.

NOTE to Agencies: If the SIR is not paid, there is NO COVERAGE for the Insured or you as the Additional Insured or Indemnified Party. Since there is usually a requirement in the

SIR provisions on the Contractor's policy that the Named Insured Contractor (not the Agency as an Additional Insured) is the only party allowed to make the payment of the SIR in order to trigger coverage, it is necessary to include the Contract provision requirement above

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. 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 work.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work,** shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit C: Contract Protest Procedures

All appeals shall be submitted in writing, identifying the action being appealed and specifically stating the basis or grounds of the appeal. Appeals shall be filed within 10 days following the date of determination or action for which an appeal is made and submitted to the City Clerk at wperkins@ci.dunsmuir.ca.us

Unless otherwise agreed upon by the person filing the appeal and the applicant, appeal hearings should be conducted within 45 days from the date of appeal submittal. Notice of hearing shall be posted in the local newspaper, on the city website, and in front of city hall at least 10 days prior to the appeals hearing.

Each appeal shall be considered *de novo* (anew) and the appeal authority may reverse, modify or affirm the decision in whole or in part. In taking its action on an appeal, the appeal authority shall state the basis for its action. The appeal authority may modify, delete, or add such conditions as it deems necessary. The appeal authority may also refer the matter back to the original approving authority for further action. The action of the appeal authority is final on the date of decision and may not be further appealed.