

**CITY OF AUBURN**  
**PLANNING & PUBLIC WORKS DEPARTMENT**



**Request for Proposals to Provide  
Housing Element and Safety Element Update Services**

City of Auburn  
1225 Lincoln Way  
Auburn, CA 95603  
530-823-4211 ext. 140

Date of Issuance: October 4, 2019  
Submittal Deadline: October 25, 2019

## **1. INTRODUCTION**

The City of Auburn (the “City”) invites qualified Respondents to submit proposal to provide consulting services for the update of the Housing Element and Safety Element of the City’s General Plan. The City must update its Housing Element as mandated by State Law for the 2021-2029 planning cycle, with completed certification by the State Department of Housing and Community Development (“HCD”) by August 31, 2021.

## **2. BACKGROUND INFORMATION**

The last update to the City of Auburn Housing Element was adopted on February 10, 2014 by the City Council and certified by HCD on February 20, 2014. The current Housing Element document can be found on the City’s website at:

<http://www.auburn.ca.gov/DocumentCenter/View/627/City-of-Auburn-2013-2021-Housing-Element?bidId=>).

HCD has established August 31, 2021 as the deadline for certification of the City’s adopted Housing Element for the 2021-2029 planning period. In addition, the required update to the Housing Element, the Safety Element of the City’s General Plan also needs to be revised to address climate adaptation and resiliency strategies and identify new information relating to flood and fire hazards in compliance with State law (SB 379 and SB 1035). The City’s Local Hazard Mitigation Plan, which was updated in 2016, is available for viewing online at:

<https://www.placer.ca.gov/1381/Local-Hazard-Mitigation-Plan>

As further detailed in the “Scope of Work” and “Required Tasks” sections of this document, the services detailed in the RFP shall include a concurrent review and update of the City’s Safety Element to meet State requirements. It shall be the responsibility of the selected Respondent to ensure that the adoption process and final work product meet the applicable requirements set forth by HCD and State law.

## **3. SCOPE OF WORK**

**General Expectations:** The selected consultant or consultant team will be expected to work collaboratively with City staff and stakeholders to conduct a Housing Element and Safety Element update process that proactively engages the community, complies with all applicable laws and regulations, and results in an HCD certified Housing Element that addresses the housing needs of the City. It is expected that the consultant will:

- Be familiar with the State requirements and HCD guidance regarding the Housing Element, including, but not limited to, recent legal changes regarding the site inventory and fair housing;
- Be familiar with the State requirements and HCD guidance regarding the Safety Element update, including, but not limited to flood, fire hazards, and climate adaptation and resiliency strategies;
- Effectively utilize technical expertise related to housing;
- Actively engage community stakeholders and effectively communicate ideas through use of a variety of forums and platforms;
- Promote and advertise public involvement and participation;

- Formulate realistic and creative solutions to address housing challenges in the community that comply with State law and fit into the City’s General Plan and Zoning Code framework;
- Ensure that the project remains on time and within the allocated budget; and
- Appropriately integrate graphics/maps/infographics as part of the updated documents.

**Housing Element:** The Housing Element will be updated to include the policies, strategies, and actions the City will undertake to facilitate the construction of new housing and preservation of existing housing to meet the needs of the population during the designated planning period (2021-2029). The implementation of SB 375 (2007) requires that the next Housing Element be certified by HCD no later than August 31, 2021.

The updated Housing Element must address the City’s Regional Housing Needs Assessment (RHNA) allocation. Sacramento Area Council of Governments (SACOG), in consultation with HCD, will develop the Draft 2020 RHNA Allocation Plan, including the City’s allocation, separated into four income categories. SACOG anticipates that it will adopt the final RHNA allocation in August 2020.

In accordance with State law, the Housing Element must include:

- A complete analysis of the specific housing needs and an inventory of the resources and constraints relevant to addressing the housing needs;
- An inventory of land suitable for residential development to meet the City’s housing needs;
- Identification and analysis of potential and actual governmental and nongovernmental constraints on residential development projects;
- Identification of specific programs to implement policies and goals; and
- All other analysis, policies, and goals required to comply with applicable State law.

**Safety Element:** Per Government Code Sections 65302 *et seq.*, local jurisdictions must update their Safety Element related to fire hazards and climate adaptation and resiliency strategies upon this revision of the Housing Element. The Safety Element must be reviewed and updated as necessary to address the risk of fire in state responsibility areas and very high fire hazard severity zones, taking into account specified considerations, including, among others, the most recent version of the Office of Planning and Research’s, “Fire Hazard Planning” document. The City’s Local Hazard Mitigation Plan was updated in 2016. It is the City’s intention to use this Housing Element update process to ensure that the Safety Element of the General Plan complies with State regulations.

#### **4. REQUIRED TASKS**

##### **TASK 1: PROJECT ADMINISTRATION**

**1.1 Project Kick-Off Meeting:** Consultant will schedule a kick-off meeting with City staff to discuss project expectations regarding coordination, reporting, deliverables and all relevant project information. Consultant will prepare a meeting summary with project goals, objectives and action items.

Deliverable(s): Meeting Summary

**1.2 Project Schedule Development:** Consultant will work with City staff to finalize a project schedule within ten (10) working days after the project kick-off meeting that includes tasks and milestones to ensure certification of the Housing Element by HCD no later than August 31, 2021. The schedule shall:

- Identify project milestones (tasks) with time for staff review of work products throughout the project.
- Include public outreach timeline with public meetings and anticipated Commission and Council hearings.
- Include outreach in compliance with SB 18 and AB 52 regulations.
- Include anticipated environmental review timeline.
- Include timelines for response to HCD review and certification of the Housing Element Update and City staff review times.

The project schedule will be confirmed and/or modified by the Consultant and submitted to the City Project Manager on or before the 30<sup>th</sup> day of each month during the course of the project. In the event project schedule delays are anticipated, Consultant shall immediately advise the City Project Manager.

Deliverable(s): Initial Project Schedule, Monthly Updated Schedules

**1.3 Project Coordination:** Consultant's Project Manager will meet with City staff for a minimum of ten (10) progress meetings over the course of the project to review status to ensure objectives and milestones are being achieved. At the City's discretion, these meetings may be conducted as a conference call or in person at the City offices. Consultant will prepare a meeting summary, including action items, for each meeting. Consultant will coordinate with staff to create and make presentations to City stakeholders as necessary.

Deliverable(s): Meeting Summaries

**1.4 Regional Housing Needs Assessment (RHNA) Support (As Needed):** Consultant will assist City staff during the RHNA allocation process, if needed. This support will include developing a timeline for RHNA review and appeal process (if necessary) and assisting the City throughout the RHNA allocation process.

## **TASK 2: HOUSING ELEMENT UPDATE**

**2.1 Existing Conditions and Needs:** Consultant will review and evaluate the City's current Housing Element to determine the revisions that must occur to comply with current State law and HCD requirements and ensure timely certification. The Consultant shall identify all obsolete information, tables, exhibits and illustrations and prepare an analysis of the City's progress towards meeting the identified goals, policies and programs since adoption of the current Housing Element in the previous planning cycle (2014-2021).

**2.2 Housing Needs Assessment:** Consultant shall complete a housing needs assessment and needs analysis pursuant to State housing law. The Consultant will

obtain and analyze demographic, economic, infrastructure and housing data needed to complete this task.

**2.3 Adequate Sites Analysis:** Consultant will prepare an “adequate sites analysis” showing the relationship between the City’s RHNA allocation and the City’s dwelling unit capacity, availability of potential housing sites based on zoning, infrastructure, and General Plan policies, requirements, and limitations. If needed, consultant will also work with City staff to identify potential zoning strategies to address the need for additional housing unit capacity.

**2.4 Housing Resources and Constraints:** Consultant shall identify programmatic, physical, and financial housing resources available in the City. In addition, Consultant will identify governmental and nongovernmental constraints to housing production. This work will include review of existing City regulations, codes, and standards related to housing. Where constraints exist, the Consultant will propose strategies to address them.

**2.5 Housing Element Preparation:** Consultant will revise the Housing Element to ensure consistency with other General Plan elements, compliance with State law, and certification by August 2021. This task shall include the revision to any other elements, maps, tables, figures, etc. in the City’s General Plan, as necessary to be in compliance with State law and to ensure consistency with the updated Housing Element.

### **TASK 3: SAFETY ELEMENT UPDATE**

**3.1 Safety Element Review and Evaluation:** Consultant shall review and evaluate the current Safety Element to determine compliance with State law and provide a list of any corrections that must occur to text and/or exhibits to bring it into compliance.

**3.2 Safety Element Revision:** Consultant will work with staff to revise the Safety Element to ensure consistency with other General Plan elements and compliance with State law on an as-needed basis. This scope does not include a comprehensive update of the Safety Element. This task is intended to be limited in scope and only includes an update to portions of the Safety Element as necessary for compliance with State law and consistency with other elements in the General Plan.

### **TASK 4: COMMUNITY ENGAGEMENT AND PUBLIC HEARINGS**

**4.1 Community Outreach and Engagement:** Consultant will propose an appropriate community outreach program that meets HCD standards and meaningfully engages a broad array of community interests in the Housing Element update process. Consultant is expected to prepare branded outreach materials for distribution and communication/advertising purposes. The City expects that the public outreach and engagement will include at least three (3) public meetings/workshops throughout the update process in addition to the Commission and Council meetings outlined below. Consultant shall submit the outreach program to the City for review, comment, and approval within sixty (60) days of execution of the contract.

**4.2 Public Hearings:** Consultant will prepare or assist in the preparation of draft staff reports, exhibits, and presentations to Planning Commission and City Council.

Consultant will also be prepared to attend a minimum of six (6) public hearings held by the Planning Commission and/or City Council.

Deliverable(s): “Community Outreach Program”, draft staff reports, and exhibits

## **TASK 5: FACILITATION OF REVIEW AND APPROVAL OF GENERAL PLAN AMENDMENTS**

**5.1 Ongoing Staff Review of Draft Housing and Safety Element Amendments:** As work progresses, Consultant will provide the City drafts of each Housing and Safety Element section for review. Consultant is expected to coordinate with City staff to provide adequate time for review and discussion of revisions of each section.

Deliverable(s): Electronic drafts in Microsoft Word format

**5.2 First Draft of Housing and Safety Element Amendments:** Consultant will work with City staff to review comments/suggestions on previous versions. Consultant will incorporate revisions and prepare final drafts of the Housing and Safety Element Amendments using Microsoft Word, in the established City format, for public review and comment and will draft to HCD as required for review. This will include conducting the required proper public outreach and notifying interested parties and agencies.

Deliverable(s): Ten (10) hard copies and one (1) electronic copy in both PDF and Microsoft Word format

### **5.3 Final Draft of Housing and Safety Element Amendments**

Following public review and comment period, Consultant will prepare Final Draft Housing and Safety Element Amendments in response to comments from HCD, the California Geological Survey of the Department of Conservation, the State Board of Forestry and Fire Protection, City staff, Planning Commission, City Council, and the public.

Deliverable(s): Ten (10) hard copies, one (1) electronic copy in both PDF and Microsoft Word format, and twenty (20) CD-ROM copies

**5.4 State Certification and City Adoption:** The Consultant will facilitate State review and certification of the Housing Element. Upon adoption of the Final Draft Housing and Safety Element Amendments by the City Council, the Consultant will prepare a final version of the document for inclusion in the General Plan document.

**5.5 Public Noticing:** The Consultant will prepare and carry out the appropriate public noticing and required consultations and notifications for General Plan Amendments per local and State regulations. Consultant shall coordinate with City staff to allow for adequate review and oversight of noticing materials and activities. In addition, the Consultant is expected to carry out appropriate tribal noticing and consultation in accordance with statutory timelines.

## **TASK 6: ENVIRONMENTAL ANALYSIS**

**6.1 Environmental Determination:** Consultant will conduct an initial environmental review of the project and complete an initial study checklist for the Housing Element and

Safety Element updates in compliance with the California Environmental Quality Act (CEQA) requirements (Public Resources Code 21000 et. seq.) and State CEQA Guidelines (California Code of Regulations, Section 15000 et. seq).

Please note: Since the level of environmental review has not yet been determined, the portion of the proposal responsive to Task 6 shall include two scopes of work: one for each of the potential levels of environmental review (Mitigated Negative Declaration or Environmental Impact Report).

**6.2 Draft of Environmental Analysis:** Consultant will prepare a draft environmental document in compliance with CEQA and submit for a minimum 30-day internal City staff review period. After City staff provides comments on the draft document, Consultant shall update draft to incorporate comments and other technical analysis as needed.

Deliverable(s): Three (3) hard copies, one (1) electronic copy in both PDF and Microsoft Word format, and twenty (20) CD-ROM copies

**6.3 Environmental Noticing, Outreach, and Filing:** Consultant will conduct all required outreach, noticing, and filing of notices and documents for the environmental review of the General Plan elements update. If necessary, Consultant shall produce the Notice of Preparation (NOP) and Notice of Scoping meeting, subject to City staff review. This includes preparing notices and mailings for SB 18 and AB 52 compliance, and completing responses to comments. Consultant shall also be responsible for preparing materials for, presenting at, and attending public scoping meeting, if necessary.

Deliverable(s): One (1) hard copy and one (1) electronic copy in both PDF and Microsoft Word format

**6.4 Final Draft of Environmental Analysis:** Consultant will coordinate with City staff to review and consider comments/suggestions received on previous version. After City staff provides comments on the draft document, Consultant shall update draft to incorporate comments and other technical analysis as needed (allowing for at least two rounds of review). Consultant will review public comments, incorporate revisions and prepare final draft of environmental document for public review and comment.

Deliverable(s): Twenty (20) hard copies, one (1) electronic copy in both PDF and Microsoft Word formats, twenty (20) CD-ROM copies

**6.5 Adoption:** As needed, Consultant shall prepare final findings of fact and statement of overriding considerations, and provide to City for review prior to distribution. Consultant shall prepare and submit required filings with State agencies and County Recorder's Office.

Deliverable(s): One (1) hard copy and one (1) electronic copy in both PDF and Microsoft Word formats

## **BILLING METHOD**

The project budget shall be broken down into milestones (tasks) to be completed. Billing method will be based on the completion of milestones, and have a "not to exceed" amount specified for each milestone in the budget. Billing will occur monthly, and

invoices shall show movement toward each milestone and number of hours worked. Billing for each milestone shall not exceed the budget allocated for each milestone.

## **TIMELINE**

The project will be managed by the City of Auburn Planning and Public Works Department. Staff from additional departments will also provide input throughout the process. The City anticipates that work will commence in November of 2019.

## **5. SPECIFICATIONS FOR SUBMITTAL**

Respondents shall provide their understanding of the project, identify proposed team members, and explain the responsibilities of each team member, including the project manager (if the project manager will be different for different tasks/phases of the project, please specify). Proposals should include sufficient detail to allow a thorough evaluation and comparative analysis of all members of the team.

For every member of the proposed team, including any subconsultants or other experts that will be engaged for the project, provide a Statement of Qualifications including, at a minimum, the following information organized into sections:

1. Format
  - a. Please submit one (1) cover letter and eight (8) copies of the submittal packet formatted to standard letter-sized paper, and one (1) electronic PDF copy (submitted via flash drive).
2. Work Proposal
  - a. Provide a detailed proposal for completing each milestone of the work described, including the following:
    - i. Synopsis of the project based on the description and Consultant team's experience working on General Plan element updates; and
    - ii. Detailed step-by-step breakdown of tasks with responsible person, anticipated time to complete, cost estimates, and deliverables.
  - b. Estimated/proposed timeline for the entire project.
    - i. Provide a flow chart depicting overall project schedule, milestones, community meetings, Commission and City Council hearings. Identify focus of each meeting, personnel who will be in attendance, and expected cost.
3. Project Team
  - a. Indicate whether the project team is a group of individuals or a firm(s).
  - b. Identify the key staff person responsible for general project management for each phase of the project.
  - c. Identify the key staff person responsible for management of the CEQA compliance functions.
  - d. All project team member names, resumes and professional titles including all professional credentials and degrees, names and addresses of institutions that granted the credentials and degrees and dates granted.
  - e. Describe the specific responsibility each team member will have to the project.
  - f. If respondent is a firm, describe how the firm is organized and how resources will be utilized for the project.
  - g. Describe current workload for each team member.

4. Experience
  - a. Detail previous experience updating, amending General Plan elements or similar activities.
  - b. Detail previous experience preparing CEQA documentation, including but not limited to, documentation for housing and safety element updates.
  - c. Indicate how the team's experience relates to the project.
5. Public Outreach
  - a. Detail previous experience working with the public, commissioners, and decision-makers. Describe examples of public outreach efforts used in past projects.
  - b. Provide an overview of the public outreach strategy to be utilized for this project, including outreach platforms and activities.
  - c. Provide, if applicable, examples of public outreach campaigns used for similar projects.
6. Work Product Examples
  - a. Include as an appendix, relevant examples of completed work products for consultant team and subconsultants or other experts that the team intends to engage on this project. Work samples can be returned, if requested.
7. References
  - a. List five (5) public sector clients including three (3) of the most recent and relevant with whom similar, comparable services have been performed. Provide name, mailing address, and telephone number of the principal contact.
  - b. For each reference, provide a brief description of the services provided and the dates of the work.
8. Fee Schedule
  - a. Please submit a schedule showing the estimated costs for each milestone of the project and hourly billing rates of all members of the team.

**Please note:** Any substitution of key personnel during the project shall require the prior approval of the City and submittal of the above information for the proposed new team member for City review.

Submit proposals as follows:

Firms wishing to be considered responsive to this RFP, must submit eight (8) hard copies and one (1) electronic PDF copy (saved on a flash drive) of their proposal in a sealed envelope no later than **Friday, October 25, 2019 by 5:00 pm**. The envelope should be clearly marked as shown below:

Proposal for Housing Element and Safety Element Update Services  
Attention: Tonya Ward, AICP, Senior Planner  
City of Auburn Planning & Public Works Department  
1225 Lincoln Way, Room 3  
Auburn, CA 95603

**Submit questions to:**

Tonya Ward, AICP, Senior Planner (Project Manager)  
[tward@auburn.ca.gov](mailto:tward@auburn.ca.gov)

**LATE OR INCOMPLETE PROPOSALS WILL NOT BE ACCEPTED.**

**6. EVALUATION PROCESS AND CRITERIA**

The City’s review process will emphasize the following:

- A. Demonstrated understanding and ability to complete the project;
- B. Background and experience of the project team, including individual team members and subconsultants assigned to various tasks;
- C. Project management approach;
- D. Response to all components of RFP;
- E. Proven track record for completing similar projects on time and within budget; and
- F. Cost

Submittals will be evaluated by a review panel consisting of City staff. The City will provide the answers to any questions submitted by an interested party, pursuant to the schedule below, to all parties that have indicated interest in the RFP. After the closing date, the City will hold oral interviews and select a firm; after which a negotiated contract will be presented to the City Council for approval. Work will commence as soon as the contract is approved.

**7. TENTATIVE PROPOSAL EVALUATION SCHEDULE**

The City has established the following target dates for evaluation and scheduling purposes. The following dates are tentative, non-binding, and subject to change without prior notice:

<b>RFP Release.....</b>	<b>October 4, 2019</b>
<b>Deadline for Proposers to Submit Questions.....</b>	<b>October 11, 2019</b>
<b>Anticipated Deadline for City to Respond to Questions.....</b>	<b>October 15, 2019</b>
<b>Proposals Due .....</b>	<b>October 25, 2019</b>
<b>Interview Panel/City Council Award.....</b>	<b>Week of November, 4, 2019</b>
<b>Anticipated Work Start Date.....</b>	<b>Week of November 11, 2019</b>

**8. GENERAL TERMS AND CONDITIONS**

The City of Auburn shall not, in any event, be liable for any pre-contractual expenses incurred by the proposer. Pre-contractual expenses are defined as expenses incurred by the proposer in:

- 1. Preparing the response to this RFP;
- 2. Submitting the proposal to the City;
- 3. Negotiating with the City in any manner related to this RFP;
- 4. Any other expenses incurred by proposer prior to the date of the executed agreement.

The City reserves the right to reject any and all proposals. Further, the City makes no representations that any agreement will be awarded to any proposer responding to this RFP.

The City reserves the right to cancel the services at any phase or at any point in any phase and pay the Consultant only for costs of services satisfactorily performed and incurred to that date. All data, documents and other products used or developed during the course of facilitating the services will remain the property of the City.

**8.1 Contract between Consultant and City:** The City will prepare a contract for implementation between the selected Consultant and the City. See **Attachment A** for a sample of the City's professional services agreement. Please indicate in your proposal any exceptions taken to the requirements of the agreement.

**8.2 Late Proposals:** It is the Consultant's sole responsibility to ensure that proposals are received at the City's Planning & Public Works Department office by the scheduled closing time specified in this RFP. Proposals will not be accepted after the deadline.

**8.3 Withdrawal of Proposals:** Proposals may be withdrawn if written notification of withdrawal of the proposal is signed by an authorized representative of the proposer and received at the City's office prior to the closing time for receipt of proposals. Proposals cannot be changed or withdrawn after the time designated for receipt.

**8.4 Rejection of Proposals:** The City reserves the right to reject any and all proposals received in response to this RFP and waive any informality in any proposal if it is determined to be in the best interest of the City to do so.

**8.5 Proposal Validity Period:** Submission of a proposal will signify the proposer's agreement that the proposal, and contents thereof, are valid for ninety (90) days following the submission of the proposal.

**8.6 News Releases:** News releases pertaining to the award of any contract resulting from this RFP shall not be made without prior approval of the City. The City's name shall appear on customer lists, advertising, or other materials used to promote Consultant's services without prior written approval of the City.

**8.7 Closing:** The City reserves the right to accept or reject any and all proposals; waive any defects or irregularity, modify the proposal terms or the selection process or negotiate a contract, along with a Revised Scope of Work, schedule and fees with the Consultant. The City reserves the right to eliminate or add tasks identified in the Scope of Work with a corresponding reduction or increase in the fee. Staff shall present its recommendations to City Council and is subject to its approval.

**ATTACHMENT A**  
**PROFESSIONAL SERVICES AGREEMENT TEMPLATE**

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSULTANT SERVICES**

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

**1. IDENTIFICATION**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Auburn, a California municipal corporation (“City”), and \_\_\_\_\_, a \_\_\_\_\_ (“Consultant”).

**2. RECITALS**

- 2.1. City has determined that it requires the following professional services from a consultant: **[enter description of consultant’s services]**
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

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

**3. DEFINITIONS**

- 3.1. “Scope of Services”: Such professional services as are set forth in Consultant’s **[enter consultant’s proposal date]** proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. “Agreement Administrator”: The Agreement Administrator for this project is [Name and title]. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant

- 3.3. “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.4. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
- 3.5. “Commencement Date”: [date].
- 3.6. “Termination Date”: [date]

#### 4. TERM

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

#### 5. CONSULTANT’S DUTIES

- 5.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.
- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. **Professional Standards.** Consultant shall perform all work to the standards of Consultant’s profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal

laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).

- 5.6. Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.7. Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. [Name of Project Manager] shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.8. Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.9. Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.
- 5.10. Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.11. Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and

this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

## 6. SUBCONTRACTING

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

## 7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.

- 7.3. Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

## **8. PREVAILING WAGES**

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

## **9. OWNERSHIP OF WRITTEN PRODUCTS**

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

## **10. RELATIONSHIP OF PARTIES**

- 10.1. General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.

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

## 11. INDEMNIFICATION

- 11.1 Definitions.** For purposes of this Section 11, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. "City" shall include City, its officers, agents, employees and volunteers.
- 11.2 Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement.
- 11.3 Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City.

- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## 12. INSURANCE

- 12.1. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.
- 12.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Consultant shall file with City:
- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: [insert project name]
  - Documentation of Best's rating acceptable to the City.
  - Original endorsements effecting coverage for all policies required by this Agreement.
  - Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

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

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

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

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

**12.5. Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.

**12.6. Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.

- 12.7. Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- 12.8. Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- 12.9. Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of the City of Auburn must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions and Worker’s Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant’s insurance policies shall be primary as respects any claims related to or as the result of the Consultant’s work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant’s insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 12.10. Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.
- 12.11. Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days’ notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired

policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Auburn, Attn: [insert department or individual], 1225 Lincoln Way, Auburn, CA 95603.

- 12.12. Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.13. Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.15. Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.

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

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

### **13. MUTUAL COOPERATION**

- 13.1. City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 13.2. Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement,

Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

## 14. NOTICES

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

### If to City

Tonya Ward, AICP, Senior Planner  
City of Auburn  
Planning & Public Works Department  
1225 Lincoln Way  
Auburn, CA 95603  
Telephone: (530) 823-4211 x140

### If to Consultant

[Name]  
[Address]  
[Address]  
Telephone:  
Facsimile:

With courtesy copy to:

Gary B. Bell  
Auburn City Attorney  
Colantuono, Highsmith & Whatley, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945  
Telephone: (530) 432-7357  
Facsimile: (530) 432-7356

## 15. SURVIVING COVENANTS

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

## 16. TERMINATION

**16.1. City Termination.** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City

data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

**16.2. Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.

**16.3. Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.

**16.4. Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## **17. INTERPRETATION OF AGREEMENT**

**17.1. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.

**17.2. Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.

**17.3. Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.

**17.4. Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

**17.5. Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or

unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

- 17.6. No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

## **18. GENERAL PROVISIONS**

- 18.1. Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- 18.2. Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 18.3. Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.4. Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.6. Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law,

disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

**18.8. Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.

**18.9. Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City’s sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

**18.10. Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.

**18.11. Attorneys’ Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs expended in the action.

**18.12. Venue.** The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

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

“City”  
City of Auburn

“Consultant”  
[Name of Company or Individual]

By: \_\_\_\_\_

By: \_\_\_\_\_

*Signature*

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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

*Signature*

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Attest:**

By: \_\_\_\_\_  
Amy Lind, City Clerk

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

**Approved as to form:**

By: \_\_\_\_\_  
Gary B. Bell, City Attorney

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