



REQUEST FOR QUALIFICATIONS (RFQ)
FOR
ON CALL PLANNING SERVICES

Issue Date: **August 24, 2020**

Proposal Due Date: **September 21**

No Later Than: **4:00 P.M.**

Contact:

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REQUEST FOR QUALIFICATIONS / REQUEST FOR PROPOSALS

SECTION 1. INTRODUCTION

1.1 Background

The City of Benicia ("City") is a general law city located in Solano County. Benicia is a city of about 28,000 people, situated on the Carquinez Strait in the San Francisco Bay Area. The Community Development Department is comprised of the Planning and Building Divisions. The Planning Division of the Community Development Department presently has a Planning Manager, Associate Planner, and Assistant Planner. The Planning Division handles all planning permit activities legally mandated general plan elements, regional planning efforts, and a myriad of other activities. The Planning Division also provides the staff support for three commissions: the Planning Commission, the Historic Preservation Review Commission, and the Community Sustainability Commission.

1.2 Description of Project

The Planning Division is soliciting proposals from qualified individuals and/or firms interested in assisting the City with one or more the following services. An on-call list will be created for each practice area outlined below. Responses may be submitted for one or more of the requested services:

- A. Contract Staffing
- B. Land Use Planning & Design
- C. Environmental Review
- D. Housing and Community Development Block Grant (CDBG)

On-Call Approach

For any project that falls within the scope of this RFQ, the Community Development Department may solicit bids from the pre-qualified, pre-contracted "on-call" firms. City staff will provide a scope of work via email to the contracted firms, who will be asked to submit bids (inclusive of work tasks, personnel and cost proposal) electronically within five (5) to ten (10) working days depending on the nature of the project. Following a review of bids, city staff will make the final decision on which firm is the most qualified to perform the work based on a combination of cost, scope and qualifications. Because contracts will be pre-approved, the project will be initiated by execution of a work order.

For projects that are reimbursable by a project applicant, once a firm has been selected the city will require the applicant to submit a deposit (typically 25% of the bid amount plus administrative fee). When the initial and subsequent deposits are depleted to a pre-determined level, additional deposit(s) will be required up to the approved cost estimate. The consultant shall not exceed the bid amount, unless authorized in writing by the city. If the actual project review costs exceed the original bid, the "on call" contract firm will provide a written explanation and authorization before proceeding. City staff and applicant will agree on the additional funding that will be needed to complete the project review.

The anticipated contract period is five (5) years commencing December 2020 and extending through December 2025.

1.3 Inquiries and Request for Additional Information

All written inquiries and requests for additional information pertaining to this RFQ, any Addendum, or any matter relating to Consultant selection process, must, unless otherwise identified in an Addendum, be directed to the following designated Owner's Consultant:

Suzanne Thorsen, AICP
250 East L Street
Benicia, CA 94510
707-746-4382
sthorsen@ci.benicia.ca.us

A complete RFQ package may be obtained from the City by email.

1.4 Definitions of Terms

This section contains definitions that are used throughout this RFQ, including appropriate abbreviations as indicated.

"Addendum/Addenda" is any and all amendments to this RFQ and any and all responses to written questions regarding this RFQ issued by the City in a written format and incorporated by reference into this RFQ.

"Consultant" is an individual, firm, partnership, corporation, consortium, joint venture, or other entity that is a potential Respondent to this RFQ.

"Consultant Services" are the services to be provided by the Consultant, as further detailed in section 2.

"Distribution List" is the list of interested parties to be used for the distribution of any and all Addenda prepared by City.

"City" is the City of Benicia.

"Professional Services Agreement" or **"PSA"** is the Professional Services Agreement, including Appendices, initially in form attached hereto as Exhibit A, to be executed by City and the Selected Consultant.

"Project Manager" is any person authorized by City to manage or administer the RFQ process and to whom all communications, both written and oral, shall be directed during the RFQ issuance, evaluation and selection process.

"Project" is the City's On-call Planning Services project, more particularly described in Section 1.2 above.

"Qualification" is a written response to this RFQ, including all exhibits, supplementary materials, and attachments thereto, pursuant to the requirements set forth in this RFQ.

"Request for Qualifications/Proposals" or "RFQ" is any and all documents comprising this RFQ package, including those documents and attachments hereto and any and all Addendum/Addenda which City may issue.

"Respondent" is an individual, firm, partnership, corporation, consortium, joint venture, or other entity that chooses to submit a Proposal in response to this RFQ.

"Selected Consultant" is a Respondent selected and approved by the Board to execute the Professional Services Agreements.

“Services” are the work, services, equipment and materials to be furnished by Consultant under the Professional Services Agreement.

1.5 Schedule

City anticipates following the following schedule for certain activities in relation to this RFQ.

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
Issuance of RFQ	City	<u>August 21, 2020</u>
Submittal of Written Questions Deadline	Potential Respondents	<u>September 7, 2020</u>
Response to RFQ Questions	City	<u>September 11, 2020</u>
Proposals Due	Potential Respondents	<u>September 21, 2020</u>
Short List Notification	City	<u>September 30, 2020</u>
Interviews	City	<u>October 2020 (TBD)</u>
Execution of Contract and Commencement of Services Under PSA	City/Selected Consultant	<u>December 2020</u> , subject to contract negotiations and City Council Approval

City reserves the right to modify this schedule at any time at its sole discretion.

SECTION 2. PROJECT AND SCOPE OF SERVICES

If the City exercises its option to enter into a contract agreement with the Consultant for Planning services, the contract(s) will enable the City of Benicia to obtain professional and technical assistance on an as-needed basis from the selected consultant(s). At its discretion, the City of Benicia intends to select one or more firms with whom the City of Benicia will contract for services.

The City of Benicia will appoint designated consultants to provide contract support services under the direction of the Planning Manager or Community Development Director. The consultant(s) must be able to provide a range of specialized services and staff to complete representative tasks, including, but not limited to, planning, administration, specialized analytical studies, and other miscellaneous municipal report writing.

The practice areas for on call services are described in Exhibit F. The Respondent is asked to provide relevant qualifications, work samples, and demonstrate an understanding of the tasks and methodology to achieve the objectives within the applicable practice areas presented in this Request for Qualifications (RFQ). If the Respondent is submitting proposals for more than one practice area, the response should be broken out into sections based upon the practice area.

SECTION 3. PROFESSIONAL SERVICES AGREEMENT AND RELATED MATTERS

This RFQ and attached form of Professional Services Agreement define the City’s basic requirements and serve as the basis for submittal of all proposals in response to this RFQ.

3.1 Professional Services Agreement

The City will expect the Selected Respondent to execute the attached form of Professional Services Agreement with only such changes as City may approve in its sole discretion. Respondents are expected to indicate any objections or requested changes to the form in their proposals.

Each Respondent shall sign the Acceptance of Form of Professional Services Agreement (“**Acceptance**”) in the form attached hereto as Exhibit B. Any requested modifications to the form of Professional Services Agreement must be indicated by checking the appropriate box in Exhibit B and attaching the addendum referenced therein clearly identifying Respondent’s proposed modifications. Respondents’ proposed modifications to the form of Professional Services Agreement must be made in a “Strikeout” or “Underline” format.

3.2 City’s Right to Amend

City reserves the right to make such modifications or additions to the form of Professional Services Agreement attached as Exhibit A to this RFQ. Otherwise, City reserves the right to make modifications or additions with the mutual consent of the Selected Respondent.

3.3 Selected Respondent’s Refusal to Execute

If the Selected Respondent refuses to execute the form of Professional Services Agreement in substantially the form attached as Exhibit A to this RFQ, as modified by its Proposal, City may begin negotiations with the Respondent whose Proposal is determined to be the best alternative Proposal, determine that no such alternative exists, or exercise any other available right.

SECTION 4. PROPOSAL PRE-SUBMITTAL INSTRUCTIONS

To submit questions and receive answers to questions in a timely manner and to be placed on the Distribution List for any and all Addendum/Addenda issued by City, potential Respondents must follow guidelines specified in this section. Only information supplied by City in writing through this RFQ and Addendum/Addenda, if any, may be used as the basis for preparation of Respondents’ Proposals. The standard format for submission of Proposals to be used by Respondents is described in Section 5.

4.1 Distribution List

Potential respondents should hand deliver or return mail or other courier service Acknowledgment of Receipt of RFQ Form (“Acknowledgment of RFQ”) attached as Exhibit C to this RFQ to have their names placed on the Distribution List for this RFQ, which will be used for the distribution of any and all notices issued by City. Potential respondents are therefore encouraged to return the Acknowledgment of RFQ as soon as possible. However, it remains Respondent’s sole responsibility to ensure that Respondent has obtained all Addenda.

4.2 Deadline for Submittal of Written Questions

Potential Respondents may submit only written inquiries or requests regarding the intent and clarity of this RFQ. All written questions received by the above date will be addressed at the meeting. Written questions should be submitted by email to sthorsen@ci.benicia.ca.us. The identity of the person/organization submitting the questions will not be revealed by City.

4.3 Addendum/Addenda to this RFQ

City reserves the right to interpret or change any provisions of this RFQ at any time prior **September 11, 2020**. Such amendments, if any, shall be issued as written Addendum/Addenda to this RFQ.

Additionally, City may prepare answers, in the form of an Addendum to this RFQ, to questions addressed by City and as City otherwise deems appropriate. Written responses, in the form of an Addendum and

amendments, if any, to this RFQ will be posted on the City's RFP/RFQ website. Courtesy notification will be sent to all parties whose names are on the Distribution List. Any Addendum issued by City may also be obtained in person from the office of the Project Manager. It is sole responsibility of Respondent to ensure that it obtains all Addenda and acknowledges receipt of all Addenda in its Proposal.

4.4 Acknowledgment of Receipt of Addendum

Each Respondent is responsible to inquire as to the Addendum/Addenda issued by City. All Addenda shall become part of this RFQ, and all Respondents shall be bound by such Addenda, whether or not received by Respondent. Each Respondent must sign any Acknowledgment of Addendum Form ("**Acknowledgment**") included as an attachment to any Addendum and return the Acknowledgment with their Proposal Form. Failure to return the Acknowledgment shall constitute a presumption of withdrawal from the qualification process and the potential Respondent's name shall be removed from the Distribution List.

SECTION 5. PROPOSAL PREPARATION AND SUBMITTAL INSTRUCTIONS

This RFQ and attached form of Professional Services Agreement define City's basic requirements and serve as the basis for submittal of all proposals in response to this RFQ.

Proposal Format

The Proposal shall be clear and concise to enable City to make a thorough evaluation as to whether the Proposal meets City's requirements. Proposals must include a detailed Table of Contents that is consistent with Section 5.1.1 of this RFQ. All forms attached to and supplementary materials requested in the Exhibits to this RFQ must be thoroughly completed, clearly labeled, and included in the appropriate section of the Proposal, pursuant to Section 5.1.1.

Each Respondent may only submit one response to this RFQ.

5.1.1 Proposal Organization

Each Proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated. Any Proposal that does not conform to these minimum requirements may be deemed non-responsive and rejected on that basis, in City's sole discretion.

Section 1: Proposal Summary

- Title Page
- Proposal Organization Checklist
- Transmittal Letter
- Executive Summary
- Consultant Qualifications and Experience
- Consultant Client References
- Proposal

Section 2: Financial Information

- Financial Statements
- Claims and litigation history
- Letter from insurance broker

Section 3: Response Forms

- Proposal Authorization

Acknowledgment of Addendum Form(s)
Acceptance of Form of Professional Services Agreement, including any proposed modifications

Section 4: Discretionary Supplemental Materials

Explanation of relevancy of discretionary supplementary materials
Any desired materials

5.1.2 Title Page

In a one-page cover, identify the Project and Services, the date of Proposal submittal, the name of the Consultant and its principal place of business, and the name, title, telephone and facsimile numbers and e-mail address of the person to be contacted for clarification.

5.1.3 Proposal Authorization

Prepare and sign the Proposal Authorization in form attached to this RFQ as Exhibit D (“**Authorization**”). Signature of the Authorization shall constitute acceptance of the Conditions Governing this RFQ pursuant to Section 7.2.

5.1.4 Transmittal Letter

Include a Transmittal Letter clearly stating the Respondent’s intent to enter into a Professional Services Agreement with City for the Services as defined in this RFQ and any and all Addendum/Addenda hereto. The Transmittal Letter must, as a minimum:

- Identify the date of the Proposal.
- Identify the Consultant and the proposed organizational team members and/or individuals, and the legal structure of and the principals of the firm/organization.
- Identify the name, title, telephone and facsimile numbers and e-mail address of the person authorized to negotiate for and contractually obligate the Consultant pursuant to all terms and conditions stated in the Proposal.
- Identify the name, title, telephone and facsimile numbers and e-mail address of the person to be contacted for clarification, if different from above.
- Indicate that it is being signed by the person(s) authorized to obligate the Consultant contractually.

5.1.5 Table of Contents

Each Proposal must provide in Section 1 a detailed Table of Contents for the entire Proposal submittal package.

5.1.6 Executive Summary

The Executive Summary provides an overview of Respondent’s Proposal.

The Executive Summary should identify, at a minimum, a summary of Respondent’s explanation of why Respondent believes Respondent’s firm is most qualified to be selected for this Project, and anything else Respondent deems particularly important.

5.1.7 Pricing Proposal

This RFQ requests that the Respondents who are offered interviews by the City based on their proposal provide a Pricing Proposal that identifies the cost of Services under the Professional Services Agreement (PSA). Respondents shall include hourly rates for all Services, with the understanding that Work will be billed on an hourly basis. The Pricing Proposal shall be submitted in a separate, sealed envelope clearly marked with Respondent's name and "PRICING PROPOSAL". The Pricing Proposal shall comply with the following requirements:

- 5.1.7.1 REIMBURSEABLE EXPENSES.** All Reimbursable expenses must be included in the not-to-exceed proposed price.
- 5.1.7.2 ADDITIONAL SERVICES.** Billing rates for additional services.
- 5.1.7.3 OVERTIME.** Overtime must be included in the not-to-exceed proposed price.
- 5.1.7.4 TRAVEL.** Travel time must be included in the not-to-exceed proposed price.
- 5.1.7.5 SIGNATURE.** The handwritten signature of the Respondent.

5.1.8 Consultant Qualifications and Experience

City is seeking Consultant(s) with a team composed of experienced and highly regarded professionals who have demonstrated a capacity to perform services similar to those requested on a cost-effective basis. Provide an outline of qualifications indicating relevant background experience and capabilities for the work. A list of major projects, both ongoing and planned, to which the organization is committed during the time frame of this service shall also be provided. The Respondent must identify staff who will perform day-to-day Project Services in addition to senior personnel.

Respondent shall provide a detailed resume for each of the key staff who will be responsible for each of the various components of the scope of services for this Project. The resumes shall include the individual's name, address, telephone, facsimile, their professional qualifications, and number of years in business as well as previous firm names during the past ten years, and education, years of relevant experience, professional registrations including evidence of valid applicable licensure, and at least three examples of services within the past three years pertinent to determining qualifications for the Consultant.

Each Respondent shall include a statement identifying the proposed Consultant firm, its legal structure (i.e. corporation, partnership, limited partnership, or joint venture), and its managerial personnel. If the proposed Consultant is a partnership, limited partnership, or other association, the Respondent must provide a listing of all of the partners, general partners, or association members known at the time of Proposal submission who will participate in the Services. Respondent shall identify the most recent experience for the various team members with emphasis on team collective experience.

The Proposal must describe the relevance and importance of each project in relation to the Services, disciplines, and team members' key individuals available for this Project. Respondent shall describe how this experience qualifies these parties to accomplish their proposed roles in the Project.

Substitution of personnel named in the Proposal during the Proposal process or during performance of the Services shall require City's written approval. Respondents and Consultants shall submit a written request for the substitution, including the reason for the requested substitution and a detailed resume for the new proposed person demonstrating that he or she meets the minimum requirements for the position. The substituted personnel must, in City's opinion, meet the minimum qualifications for the position being filled. Failure to obtain City's approval of substituted personnel within 15 days of the effective date of the substitution may result in financial penalties to be specified in the Professional Services Agreement.

5.1.9 Consultant Client References

Provide references for three recent projects in which Consultant performed services similar to the Services for the proposed Project. List projects which have been completed, or as a minimum, are substantially completed. For each project, (a) provide a description of project and services performed, to support the claim it is similar to the proposed Project; (b) provide a client/owner contact person, title, address and telephone number; and (c) identify key staff on the project, including consultant and other key personnel.

5.1.10 Sub-Consultants

Provide information on sub-consultants, including a description of the services to be performed by each sub-consultant.

5.1.11 Prior Litigation / Claims

Provide a description of any litigation or claims against your firm in the past five years or filed by your firm in the past five years. If the litigation or claim has been resolved, describe the resolution.

5.1.12 Financial and Related Information

Respondent is required to demonstrate that it is financially qualified to undertake the Services defined by this RFQ. To be considered qualified, the City may request from Respondent and any team member of any proposed consortium or joint venture, audited and/or reviewed financial statements for the most recently completed three fiscal years.

Respondent must also provide a list of all claims and litigation, including threatened, if any, within the past five years, on any projects for which Consultant or any team member failed to complete any work awarded, with explanation of circumstances.

Respondents must also provide a letter from its insurance broker attesting to the willingness to provide the required insurance coverages described in the Professional Services Agreement.

5.1.13 Proposed Approach

Provide a description of the technical approach to providing services to City for this Project.

5.1.14 Performance Criteria

Describe how your team is organized to provide the services to perform this Project.

Describe the major strengths of your team.

Describe the major difficulties that you might expect to encounter in designing this Project to ensure that City receives high quality design and construction. Describe the methods you would use to overcome these difficulties.

Describe your firm's ability to perform the work within the schedule outlined herein.

Describe your firm's claims experience.

5.1.15 Discretionary Supplemental Materials

Respondent may include in its Proposal submittal, on a discretionary basis, other materials that it believes may improve the quality of its Proposal. Respondent must include an explanation of the relevancy of the other materials to the Proposal. Corporate brochures may be provided as a separate submittal.

5.1.16 Miscellaneous Procedures

Each copy of the transmittal letter and Acceptance must contain an original signature. Proposals submitted by partnerships must be signed with the partnership name, followed by the signature and designation of the partner signing. Proposals submitted by corporations must be signed with the legal name of the corporation followed by the name of the state of incorporation. Two signatures are required for corporations, as follows: the signature of the president, the chair of the board or any vice president AND the signature of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of the corporation. The name of each signatory must be typed below the signature names.

City may interview any or all of the client references provided by Respondent. Submittal of a Proposal constitutes Respondent's consent for City to conduct reference checks and reasonable investigation of all information provided by Respondent.

All Proposals and accompanying documentation submitted by Respondents become the property of City and, except as otherwise provided in this RFQ, will not be returned.

5.2 Proposal Submittal

5.2.1 Proposal Due Date

Respondents must submit four (4) identical numbered copies of each Proposal, including all attachments (except that there need be only 1 copy of the financial statements), each with original signatures, in a sealed envelope marked "RFQ for Bencia On-Call Planning Services" and an electronic copy of the proposal submitted via dropbox to www.ci.benicia.ca.us/planningsubmittals.

Sealed Proposals will be received at City Hall until the hour of 4:00 p.m. [as determined by the clock on the wall at City Hall's reception], on **September 21, 2020**.

5.2.2 Proposal Delivery

All Proposals must be submitted on 8½" x 11" paper in vertically bound form, either loose-leaf, spiral, or comb-bound, with tabbed section headings clearly labeled in the format described in this RFQ. Larger paper, 11" x 17" preferred, is permissible only for plans, charts, spreadsheets and other exhibits. Proposals shall be submitted by hand delivery, U.S. Mail or other courier service. Proposals sent by U.S. Mail that do not arrive to the Project Manager by the time specified in Section 5.2.1 will be considered late, even if they were received by the Project Manager's mail distribution center on time. Facsimile transmissions will not be accepted. The Project Manager or its delegate will be responsible for determination if a Proposal is received on time. That decision will be final and no further consideration of late Proposals will be given. Any late Proposals will be returned unopened to the Respondent only upon request.

The written Proposal shall be considered the legal response. City may consider but is not obligated to provide an electronic copy version of this RFQ.

Proposals may not be amended after submission.

5.2.3 Proposal Submission

- 5.2.3.1** It is the sole responsibility of Respondent to see that its Proposal is received in proper time.
- 5.2.3.2** Respondent shall carefully examine the instructions contained herein and satisfy itself as to the conditions with which it must comply prior to submitting its Proposal, and to the conditions affecting the award of contract.
- 5.2.3.3** If more than one Proposal is offered by any individual, firm, partnership, corporation, association, or any combination thereof, under the same or different names, all such Proposals may be rejected.
- 5.2.3.4** All Respondents are hereby notified that any collusive agreement fixing prices so as to control or affects the awarding of this contract is in violation of the competitive bid requirements of State law and may render void any contract let under such circumstances.
- 5.2.3.5** Proposed prices shall be in effect for one hundred twenty (120) days from the date of submission.

5.3 Proposal Withdrawal

Any Respondent to this RFQ may withdraw a Proposal by written notice delivered to the Project Manager prior to the due date and time specified in Section 5.2.1 for receipt of Proposals.

5.4 Irregular Proposals

A Proposal may be rejected if it shows any alteration of form, additions not called for, conditional Proposals, incomplete Proposals, erasures, or irregularities of any kind. If the Proposal amount is changed after the amount is originally inserted, the change should be initialed.

5.5 City's Right To Reject or Terminate RFQ

City expressly reserves the right to further consider, accept or reject any or all Proposals submitted in response to this RFQ; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFQ, or to request new Proposals or pursue any other means for obtaining the services contemplated by this RFQ and/or the Professional Services Agreement.

SECTION 6. PROPOSAL EVALUATION AND SELECTION PROCESS

6.1 Selection Process

The City will select the most qualified proposal(s) based on the following factors described under Qualifications.

1. Ability of the Respondent to meet the project requirements: An assessment of the overall quality of the proposal. Qualities and indicators that will receive consideration include detail and clarity of the discussion as to the bidder's approach to undertaking these services; understanding and experience of relevant work areas within the City of Benicia or Solano County; the demonstrated ability to work with governmental bodies; and a full understanding of applicable laws or regulations that relate to these services.
2. Ability of the Respondent to carry out and manage the proposed services: An assessment of the experience of the bidder in general. Qualities and indicators that will receive consideration include the number and types of similar services the bidder or its employees have provided; the bidder's demonstrated

ability to undertake this project; the general level of experience in the areas of supervision, observing and monitoring projects; the bidder's ability to realize timetables and quality control objectives; and the demonstrated general ability to bring about a successful completion of the projects under the bidder's direction.

3. Capabilities of the Respondent and/or Team: Assessment of the capabilities of the Respondent and individuals that will be engaged in providing these services. Qualities and indicators that will receive consideration include the professional, technical, and educational qualifications and registration/licenses of each bidder and individuals involved; the applicable experience and qualifications of managing personnel; and the specific experience gained in providing similar services.

4. The Respondent and/or Team's proximity to the project: An assessment of the geographic proximity to the project; the location of the office from which the proposed project will be administered; the perceived response time and general availability of the Respondent's management to be on site; the perceived effect that project management location will have on price and the ability of the project to be completed on a timely basis; and the availability of special travel or communication plans which would effectively mitigate difficulties associated with location. For contract staffing, the Respondent shall specify the ability for contract staff to report to the City of Benicia at least one (1) day per week, at minimum, as specified on a project basis.

5. Willingness to comply with the proposed agreement terms: A sample agreement is attached (Exhibit A). Proposals will be rated based on the exceptions taken to the proposed agreement. Due to the nature of this procurement, the city does not intend to modify or alter the agreement for any selected firm.

City reserves the right, in its sole discretion, to waive minor irregularities, and to waive mandatory requirements provided that all of the otherwise responsive Proposals fail to meet the same mandatory requirements and the failure to do so does not otherwise materially affect this RFQ and selection process.

City reserves the right to modify or suspend any and all aspects of the selection process indicated in this RFQ, to waive any defects as to form or content of this RFQ, or to reject any or all Proposals.

6.2 Evaluation Process

Proposals will be evaluated on a comparative, competitive, qualification basis, based upon the RFQ's submittal requirements, including the experience, organization and qualifications of the firm and individuals proposed, and the offered price. Specific evaluation criteria will include:

- The ability, capacity, and skill of the Respondent to perform the contract and effectuate the work;
- The type of work needed by City in light of the nature of the project and budgetary issues;
- The years of California experience of the Respondent;
- The ability of the Respondent to effectuate the work within the time specified, without delay;
- The character, integrity, reputation, judgment, experience, and efficiency of the Respondent;
- Respondent's claims / litigation experience;
- Whether the Respondent has satisfactorily performed similar work on similar projects;
- Any other factor deemed to be relevant, in City's sole discretion.

During the evaluation process the Selection Committee may conduct independent research, request additional relevant information specific to the evaluation process, and seek assistance from reliable sources to clarify, explain, or otherwise participate in the evaluation process without issuing an Addendum. Proposals will not be ranked based solely on cost. The Selection Committee shall make its decision based on committee members' analysis and assessment of each Proposal's positive, neutral, and negative attributes.

City reserves the right to conduct its own due diligence of the Respondents prior to selection of a Selected Respondent.

6.3 Interviews

City, in its sole discretion, may prepare a short list of Respondents for interviews. Respondents who are invited to attend an interview will be notified in writing. Only the actual personnel who will be responsible for the work should come to the interview.

If requested by City, qualified Respondents may be required to present their Proposals to the Selection Committee and submit to oral questions.

City personnel will schedule the interviews in early October, 2020 to be held remotely over Zoom,. Each Respondent should prepare a presentation not to exceed 25 minutes. The total time allowed for each Proposal interview shall be 1 hour, including set-up and questions and answers.

The interviews shall be solely for the benefit of City and shall not be open to the public or to other Respondents.

6.4 Right to Protest

Respondents that City otherwise determines are responsive and responsible have the right to protest a Proposal; protests from any other Respondent will not be considered. Any protest to this RFQ process or selection of the Selected Respondent must be delivered to the Community Development Department at the Benicia City Hall by 4:00 pm of the 7th calendar day following City staff's identification of the Selected Respondent(s) to be recommended to the Board, and satisfy the following requirements:

- a. The initial protest must contain a complete statement of the basis for the protest.
- b. The protest must refer to the specific portion of the document that forms the basis for the protest.
- c. The protest must include the name, address, and telephone number of the person representing the protesting party.
- d. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Respondents who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- e. The procedure and time limits set forth in this paragraph are mandatory and are a Respondent's sole and exclusive remedy in the event of a Proposal protest. Respondent's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Proposal protest, including filing a Government Code Claim or legal proceedings. A Respondent may not rely on a protest submitted by another Respondent, but must timely pursue its own protest.

6.5 Post Approval Procedures

The Professional Services Agreement will be finalized promptly following City approval of final Selected Consultants. In the event that the approved Selected Consultant fails or refuses to sign a Professional Services Agreement acceptable to City, City reserves the right to finalize a Professional Services Agreement with other qualified Respondent(s) without undertaking a new RFQ process, or exercise any other available right. The time for awarding the contract may be extended by City.

SECTION 7. CONDITIONS GOVERNING THIS RFQ

7.1 Confidentiality

City has made a determination in accordance with Government Code Section 6255 that all Proposals submitted in response to this RFQ shall not be made public by City until after City has executed and adopted by resolution a Professional Services Agreement with the Selected Consultant. In the event a Respondent wishes to claim portions of its Proposal exempt from disclosure under the Public Records Act, it is incumbent upon Respondent to clearly identify those portions with the word "confidential" printed on the lower right-hand corner of the page, along with a written justification as to why such information should be exempt from disclosure. However, City will make a decision based upon applicable laws.

City shall notify Respondent of any materials or information that City does not believe are entitled to exemption from the Public Records Act, and Respondent shall have five (5) business days from such notice to:

- withdraw its Proposal;
- withdraw such information from its Proposal; or
- withdraw such information and replace it with substituted information for which Respondent does not claim an exemption.

Proprietary or confidential data must be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal. Confidential data is normally restricted to confidential financial information. The cost of Services shall not be designated as proprietary or confidential information.

7.2 Insurance for Contract Services

Insurance coverage shall be at least as broad as:

- 7.2.1 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 \$2,000,000 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.

*Please note, the City will require a separate additional insured endorsement for the Commercial General Liability policy, listing the "City of Benicia, its City Council members, officials, agents, officers, and employees".

- Auto Liability: Owned/Non-owned automobile liability insurance providing combined single limits covering bodily injury liability with limits of no less than TWO MILLION DOLLARS

(\$2,000,000.00) per accident and providing property damage liability of no less the TWO MILLION DOLLARS (\$2,000,000.00) per accident.

- 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.)
- Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

7.2.2 Additional Insured Endorsements: The Consultant shall name City and its officers, directors, agents and employees as additional insureds on their commercial general liability and automobile insurance policies.

7.3 Applicable Laws/Miscellaneous

Respondents are required to sign and submit the Authorization, stating their agreement to comply with the following terms and conditions of this RFQ:

- a. The Selected Consultant, its employees, agents, contractors, and subcontractors shall maintain professional licenses required by the laws of the State of California at all times while performing Services for the Project.
- b. The Selected Consultant shall comply with the laws of the State of California requiring employers to insure against liability for Worker's Compensation while performing Services for this Project.
- c. All Consultant Services shall comply with all statutes, ordinances, regulations, codes, and requirements of all governmental entities, including federal, state, county, and municipal entities, relating to the Project.
- d. This RFQ and any resultant Professional Services Agreement shall be governed by the laws of the State of California. The parties agree to the jurisdiction and venue of the appropriate courts in County of Solano and the State of California.
- e. All data and information provided by City or referred to in this RFQ is furnished for the convenience of interested parties in preparing a Proposal. The Respondent shall defend, indemnify and hold harmless City from any and all liability, claims, or expenses whatsoever, incurred by, or on behalf of, the Respondent's response to this RFQ. City expressly disclaims any and all liability for representation or warranties, express or implied, contained in the RFQ or any other written or oral communication transmitted or made available to interested parties, including any errors of omission.

LIST OF ATTACHMENTS

Exhibit A	Form of Professional Services Agreement
Exhibit B	Acceptance of Form of Professional Services Agreement
Exhibit C	Acknowledgement of Receipt of RFQ Form
Exhibit D	Proposal Authorization
Exhibit E	Acknowledgement of Addendum
Exhibit F	Desired Qualifications/ Major Work Tasks

FORM OF PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into by and between the **City of Benicia** (“**Owner**”) and Name of Firm (“**Consultant**”), whose address is Enter Address, on Agreement Date.

Introduction

WHEREAS, the Owner has a need for ARCHITECTURAL/ENGINEERING SERVICES relating to the City’s Name of Project **Project**, and

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. Scope of Work

1.1 Services: Consultant shall furnish to the Owner upon execution of this Agreement or receipt of the Owner’s written authorization to proceed, those services and work set forth in **Appendix A (Scope of Services and Work)** which is attached hereto and, by this reference, made a part hereof.

1.2 Ownership of Records: Documents and drawings shall consist of all documents, original and reproducible tracings, plans and specifications, calculations, sketches, electronic data, and renderings prepared by or under the direction and control of Consultant (“**A-E Documents**”). These A-E Documents and copyright shall be the property of the Owner. Consultant may retain copies of A-E Documents for its records. Owner agrees to indemnify, defend and hold Consultant harmless from and against any claims, costs, losses and damages resulting from the Owner’s misuse of such documents.

1.3 Schedule: Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with the provisions of **Appendix A (Scope of Services and Work)** including Paragraph 2 of Appendix A (Schedule of Services and Work and Scheduling); and with the Master Schedule set forth in **Appendix B (Schedule)**.

1.4 Laws: Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state, Owner and local laws, ordinances, regulations and resolutions. Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement.

1.5 Subconsultants: If the Consultant deems it appropriate to employ or retain a subconsultant or subconsultants in connection with the performance of the services under this

Agreement, the Consultant will so advise the Owner and seek the Owner's prior approval of such employment or engagement.

2. Compensation

2.1 **Total Compensation:** City shall pay Consultant compensation according to the process established in **Appendix C (Payments to Consultant)**, **not to exceed [Enter Dollar Amount](#)**. Payment shall be as specified in section 2.3, Monthly statements.

2.2 **Additional Compensation:** Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from Owner any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 **Monthly Statements:** Consultant shall provide the Owner with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the Owner shall pay within 30 days of the date each invoice is approved by the Owner. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs.

2.3.1 **Retention:** Owner shall pay Consultant for services rendered in an amount not to exceed the option totals set forth in Section 2.1, less 5% retention in accordance with Civil Code Section 3320. Owner and Consultant may enter into an escrow agreement in lieu of retention in accordance with the form set forth in Public Contract Code 22300.

2.4 **Tax Withholds:** Owner will not withhold any Federal or State income taxes or Social Security tax from any payments made by Owner to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. Owner has no responsibility or liability for payment of Consultant's taxes or assessments.

2.5 **Employee Wages; Records; Apprentices:** Consultant shall pay prevailing wages to its employees on any agreement in excess of \$1,000.00. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by the Director of the State of California Department of Industrial Relations, are on file at the County's Capital Projects Office and may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>]. Consultant shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Consultant and all subconsultants shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. Consultant shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds \$2,000 and is funded with federal funds, then Consultant shall pay federal Davis Bacon wages and comply with applicable federal requirements.

3. Term

3.1 The Term: The term of this Agreement shall be from the date of this Agreement until completion of the agreed upon services unless sooner terminated as provided below.

3.1.1 Notice to Proceed: Consultant shall not commence services or work until a Notice to Proceed is issued by the Owner.

3.2 Default: Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 Termination by Owner: Owner may terminate this agreement without cause upon 15 days prior written notice to Consultant. Termination of this Agreement shall not affect the Owner's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant, subject to any applicable setoffs.

3.4 Termination Upon Insolvency of Consultant: At the option of the Owner, the Owner may terminate this Agreement upon the occurrence of (a) bankruptcy or insolvency of Consultant, or (b) sale of Consultant's business.

4. Representatives.

Each party shall designate a representative, authorized to act on the party's behalf with respect to this Agreement. Consultant hereby designates [Insert Name](#) as the Consultant's Project Manager. Owner hereby designates [Insert Name](#) as the Owner's Project Manager. The parties or such authorized representatives shall render required decisions promptly, to avoid unreasonable delay in the progress of Consultant's services or the Project. Each party may delegate all or some of its representative's role and function to another representative or representatives.

5. Required Licenses, Certificates and Permits.

Any licenses, certificates or permits required by the federal, state, Owner or municipal governments for Consultant to provide the services and work described in **Appendix A (Scope of Services and Work)**, must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to the Owner.

6. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. Consultant - not the Owner - has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

7. Insurance

Consultant's Duty to Show Proof of Insurance. 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 services and work hereunder by the Consultant, its agents, representatives, or employees.

7.1 Coverage shall be at least as broad as:

7.1.1 **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 \$2,000,000 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.

*Please note, the City will require a separate additional insured endorsement for the Commercial General Liability policy, listing the "City of Benicia, its City Council members, officers, officials, employees, agents and volunteers".

Automobile Liability If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the services or work under the Agreement 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 \$2,000,000 per accident for bodily injury and property damage.

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.)

Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

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

Application of Excess Liability Coverage Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance Provisions.

7.2 **Other Insurance Provisions** The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.1 Additional Insured / Waiver of Subrogation The City, its City Council members, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of services, work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such services, work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

7.2.2 Primary Coverage For any claims related to this contract, the Consultant's insurance shall be primary for insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Owner, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

7.2.3 Waiver of Subrogation Consultant hereby grants to Owner a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Owner by virtue of the payment of any loss under such insurance. Consultant 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 Owner has received a waiver of subrogation endorsement from the insurer.

7.2.4 Reporting: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner or its officers, officials employees, agents or volunteers.

7.2.5 Notice of Cancellation Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Owner.

7.2.6 Self-Insured Retentions Self-insured retentions must be declared to and approved by the Owner. Owner may require the Consultant to 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 Owner.

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

7.2.8 Claims Made Policies If any of the required policies provide coverage on a claims-made basis:

- (a) The retroactive Date must be shown and must be before the date of the contract or the beginning of services or work under this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement services and work.
- (c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant must purchase "extended

reporting” coverage for a minimum of five (5) years after completion of Agreement services and work.

7.2.9 Verification of Coverage Consultant shall furnish the Owner with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the Owner before services or work commences.** However, failure to obtain the required documents prior to the services and work beginning shall not waive the Consultant’s obligation to provide them. Owner reserves the right to complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

7.2.11 Insurance Limits The limits of insurance described herein shall not limit the liability of the Consultant and Consultant’s officers, employees, agents, representatives or subcontractors. Consultant’s obligation to defend, indemnify and hold the Owner, its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the PO for Consultant to procure and maintain a policy of insurance.

8. Indemnification

8.1 **Indemnification:** To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), Consultant shall defend, indemnify, and hold harmless Owner, its officers, directors, officials, agents, employees, and volunteers (collectively, **“Indemnitees”**) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of Consultant or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively **“Liabilities”**), that arise out of, pertain to, or relate to any negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed or retained by them, or anyone that they control. Consultant’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

8.2 **Intellectual Property Indemnification:** Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. Consultant shall defend, indemnify and hold harmless the Owner from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to Consultant’s services provided to the Owner under this Agreement.

8.3 Owner shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Consultant for damages

resulting from the negligence of the general contractor and its subcontractors. Owner shall also include a provision in the construction contract with the general contractor on the Project requiring the general contractor to name Consultant as an additional insured on its Comprehensive General Liability insurance coverage. If the Consultant has the opportunity to review the construction contract prior to bidding, the Owner shall have no responsibility for the inadvertent omission of such provisions.

8.4 Consultant shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of the Owner and the Indemnitees in the exact form and substance as those contained in this Agreement.

8.5 Owner acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of Consultant's responsibilities and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. Owner shall hire hazardous materials consultants if the Project requires the testing or remediation of hazardous substances. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall, however, be responsible for the coordination of Consultant's services and work with the work of the Owner's hazardous materials consultants.

8.6 Duty to Cooperate: Consultant shall notify Owner immediately in writing of any claim or damage related to activities or services performed under this Agreement. Consultant shall cooperate with Owner in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Without limiting the foregoing, Consultant shall take all steps necessary to assist the Owner in the defense of any and all Liabilities brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project. Any additional services or work under this paragraph shall be compensated as Additional Services.

9. Status of Consultant

9.1 Independent Contractor: All acts of Consultant and its board of directors, officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of Owner. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of Owner. Consultant has no authority or responsibility to exercise any rights or power vested in the Owner. It is understood by both Consultant and Owner that this Agreement shall not be construed or considered under any circumstances, to create an employer—employee relationship, partnership, or a joint venture.

9.2 Conduct as Independent Contractor: At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of the Owner.

9.5 Means of Performing Services and Work: Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to the Owner only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be

subjected to the Owner's control with respect to the physical action or activities of Consultant in fulfilling this Agreement. Consultant has sole control over the manner and means of performing the services and work under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

9.4 Third Person Employment: If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging, or any other term of employment or requirements of law, shall be determined by the Consultant.

9.5 Services and Work for Others: Consultant is permitted to provide services and work to others during the same period service is provided to Owner under this Agreement; provided, however, such services shall not conflict directly or indirectly with the performance of Consultant's obligations under this Agreement.

9.6 W-2 Forms: It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

9.7 Claims By Third Parties: As an independent contractor, Consultant hereby indemnifies and holds Owner harmless from any and all claims that may be made against Owner based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

10. Records and Audit

10.1 Term of Maintenance: Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

10.2 Access to Writings: Any authorized representative of the Owner shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, the Owner has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement.

11. Nondiscrimination

During performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation, sexual orientation, or sex. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation

the Owner's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the personal services of Consultant. Owner has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without Owner's express written consent. Further, Consultant shall not assign any monies due or to become due under this Agreement without Owner's prior written consent.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or Owner shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To Owner: City of Benicia
[Contact Name](#)
[Contact Title](#)
[Street Address](#)
Benicia, CA 94510
[Phone Number](#)

To Consultant: [Name of Firm](#)
[Contact Name](#)
[Contact Title](#)
[Street Address](#)
[City, State, Zip Code](#)
[Phone Number](#)

15. Conflicts

Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Consultant represents to and agrees with Owner that Consultant has no present, and will have no future conflict of interest between providing the services contemplated under this Agreement to Owner and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity which has

any interest adverse or potentially adverse to Owner, as determined in Owner's reasonable judgment.

16. Confidentiality

Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this Agreement for Owner, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify Owner in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to Owner hereunder.

17. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or Owner statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

18. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

19. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce

the terms or provisions of this Agreement shall have venue in the County of [Name of County](#), State of California.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first herein above written.

CITY OF BENICIA	CONSULTANT
By: _____	By: _____
Title: _____	Title: _____
APPROVED AS TO FORM:	
By: _____ "City Attorney"	

**APPENDIX A
SCOPE OF SERVICES AND WORK**

**APPENDIX B
SCHEDULE**

**APPENDIX C
PAYMENTS TO CONSULTANT**

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated [Agreement Date](#), by and between [Name of Firm](#), hereinafter referred to as "**Consultant**" or and the City of Benicia, hereinafter referred to as "**City**" providing for [architectural/engineering](#) services.

1. The maximum payment to Consultant under this Agreement for the Project shall be: [Enter Dollar Amount](#)
2. METHODS OF PAYMENT FOR CONSULTANT'S SERVICES AND EXPENSES (Hourly with rate schedule, etc.)

[Enter Methods of Payment](#)

ACCEPTANCE OF FORM OF PROFESSIONAL SERVICES AGREEMENT

NAME OF RESPONDENT: _____

The above Respondent hereby agrees to sign Professional Services Agreement substantially similar to the form of Professional Services Agreement attached to the RFQ as Exhibit A, or has attached proposed modifications to the form of Professional Services Agreement as an Addendum to this signed Acceptance.

[Respondent must check one of the following boxes, and complete if applicable]

- Respondent's proposed modifications to the Professional Services Agreement are attached as Attachment[s] _____ **[complete as applicable]** to this signed Acceptance, pursuant to the "Strikeout" or "Underline" format described in RFQ Section 3.1.
- Respondent has no proposed modifications to the Professional Services Agreement.

Signature: _____

Print Name: _____

Title: _____

Date: _____

Exhibit C

ACKNOWLEDGMENT OF RECEIPT OF RFQ FORM

In acknowledgment of receipt of this Request for Qualifications / Request for Proposal of the City of Benicia's [_____] ("RFQ"), the undersigned Respondent agrees that it has received a complete copy, beginning with the Title Page and Table of Contents and ending with Exhibit F.

This Acknowledgment of Receipt of RFP Form must be signed and returned to the Project Manager indicated below pursuant to Section 4.1 of the RFQ. Only interested parties who elect to return this Acknowledgment of Receipt of RFQ Form completed with the indicated intention of submitting a Proposal will be placed on the distribution list for any and all notices regarding the RFQ. The name and address provided below will be used for all written correspondence related to the RFQ.

Firm: _____

Contact Name: _____

Title: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Address: _____

City: _____ State: _____ Zip: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

This entity does /does not intend to respond to this RFQ [check appropriate box].

Respondent must return this signed form to the Planning Manager identified in RFQ Section 1.2.

PROPOSAL AUTHORIZATION

NAME OF RESPONDENT _____

1. The above-named Respondent is a Respondent to the Request for Qualifications / Request for Proposals of the City of Benicia for professional services to prepare [_____] and possesses the legal authority to submit this Proposal.

2. The undersigned is authorized to conduct all negotiations for and legally bind the Respondent in all matters relating to this Proposal submittal.

3. The undersigned has reviewed, understands, is able to comply with and agrees to be bound by the General Conditions Governing the RFQ described in Section 7 of the RFQ.

4. The undersigned grants the City a right to conduct reference checks and reasonable investigation of all information provided by Respondent.

5. The undersigned certifies that this Proposal is irrevocable until 120 days after its submission date.

Signature: _____

Print Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENT OF ADDENDUM FORM (“ACKNOWLEDGMENT”)

TO THE CITY OF BENICIA

THIS ACKNOWLEDGMENT IS SUBMITTED BY:

(Firm/Company Name)

1. In submitting this Proposal, Respondent represents that the Respondent has examined all of the Contract Documents and the following Addenda (receipt of all of which is hereby acknowledged).

Addendum Number	Addendum Date	Signature of Respondent

DESIRED QUALIFICATION/MAJOR WORK TASKS

In order to be selected for the needed work, consultant should demonstrate that they have ability, qualifications, and experience to perform work associated with one or more contract practice areas as described below:

A. Contract Staffing

From time to time, the City may retain a consultant for contract planning services to augment staffing at the level of an Associate or higher. Contract planning staff would be retained for a defined period and may be required to report to work on-site at least one (1) business day per week.

B. Land Use Planning & Design

The City requires the expertise of a qualified firm to assist Planning Department staff with land use or design related tasks. Work within this practice area may include, but is not limited to, General Plan or zoning amendments, natural hazard and hazard mitigation planning, annexation, planned developments, master plans, historic preservation, development agreements, or other special studies. The consultant may be asked to coordinate project review and/or public engagement, prepare analysis, reports and presentations, and provide related technical support as needed.

C. Environmental Review

Preparation of environmental review documents for development projects may include some or all of the following: technical analysis of one or more potential environmental impacts (such as, but not limited to: biological, visual, noise, traffic, air quality, greenhouse gases, hydrology, geotechnical, and cultural and historic resources); initial studies; negative declaration or mitigated negative declaration; environmental impact reports; statutory worksheets; and environmental assessment. The scope of the consultant's work may include filing, noticing, and coordination of public review and comment processes for environmental review documents in accordance with State statute and local procedures.

The work products developed by the consultant must be adequate to meet the requirements of the California Environmental Quality Act, State CEQA Guidelines, State Planning and Zoning law, National Environmental Policy Act (NEPA), and the National Historic Preservation Act, where applicable.

D. Housing Programs and Community Development Block Grant (CDBG)

The City of Benicia administers CDBG funds and related housing programs under the purview of the Department of Housing and Community Development. Work within this practice area may include any necessary programmatic or administrative tasks related to the administration of Federal or State funds for community development and housing purposes, including coordination with sub-grantees and agencies, as well as community outreach. Work may also include implementation tasks related to the City's upcoming sixth cycle Housing Element.