



CITY OF SONOMA
REQUEST FOR PROPOSAL
On-Call Tree Maintenance and Certified Arborist Services
April 22, 2024

Prospective Contractors:

The City of Sonoma (City) is interested in receiving proposals from qualified Contractors (Contractors) to provide on-call tree maintenance and Certified Arborist consulting services as described in this Request for Proposal (RFP).

City Point of Contact:

The sole source of contact regarding this RFP is Mike Berger, Public Works Director. Individuals or firms interested in submitting a proposal are asked not to contact other members of the City staff or Councilmembers in connection with the RFP prior to the announcement of the contractor selected.

Pre-Proposal Questions:

Questions regarding this RFP must be submitted to Mike Berger at mberger@sonomacity.org. Questions will only be accepted until 5:00 p.m. on May 1, 2024, after which a single document will be issued to respond to all questions received.

Proposal Closing Date: 5:00 p.m. on May 17, 2024

Three (3) bound hardcopies and one (1) unbound hardcopy of Contractor's proposal must be received by the City no later than 5:00 p.m. on May 17, 2024. Proposals will not be accepted if received after the closing date and time. Proposals must be submitted to and addressed as follows:

City of Sonoma (Attn: Mike Berger)
No. 1 The Plaza
Sonoma, CA 95476
Confidential Proposal – Do Not Open

All submitted proposals will become part of the official files of the City of Sonoma and will not be returned.



CITY OF SONOMA
REQUEST FOR PROPOSAL
On-Call Tree Maintenance and Certified Arborist Services
April 22, 2024

TABLE OF CONTENTS

1. INSTRUCTIONS AND GENERAL CONDITIONS	1
2. SCOPE OF SERVICES	6
3. PROPOSAL FORMAT AND CONTENT	7
4. EVALUATION CRITERIA AND PROCESS	10

ATTACHMENTS

- A. Specifications
- B. Standard City Maintenance Services Agreement
- C. Standard City Professional Services Agreement
- D. Cost Proposal Form

1. INSTRUCTIONS AND GENERAL CONDITIONS

1.1. RFP Intent

The City of Sonoma is requesting proposals from qualified contractors to provide on-call tree trimming and Certified Arborist consulting services. The intent is to hire one or more tree maintenance contractors who must have on-staff a Certified Arborist as described in this RFP, and also to hire one or more individual Certified Arborist consultants. Some of the requirements contained in this RFP will not apply to individuals/firms that provide only Certified Arborist consulting services. Such exceptions will be noted in this RFP with *italic, bold text*.

1.2. Schedule of Events from Issuance of the RFP to Award of Contract

RFP Distributed	April 22, 2024
Questions Due	May 1, 2024
Responses to Questions	May 3, 2024
Proposals Due	May 17, 2024
Contract Award (anticipated)	June 5, 2024

1.3. Proposal Due Date

Three (3) bound hardcopies and one (1) unbound hardcopy of Contractor's proposal must be received by the City no later than 5:00 p.m. on May 17, 2024. Proposals will not be accepted if received after the closing date and time. Proposals must be submitted to and addressed as follows:

City of Sonoma (Attn: Mike Berger)
No. 1 The Plaza
Sonoma, CA 95476
Confidential Proposal – Do Not Open

All submitted proposals will become part of the official files of the City of Sonoma and will not be returned

1.4. Pre-Proposal Meeting and Questions

A pre-proposal meeting will not be held for this RFP. Questions regarding this RFP must be submitted to Mike Berger at mberger@sonomacity.org. Questions received by any other means will not receive a response. Questions will only be accepted until 5:00 p.m. on April May 1, 2024. Any questions received after this deadline will not be provided with a response. The City will prepare a single document to respond to all questions received and issue this document no later than May 3, 2024.

1.5. Examination of Contract Documents

By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the City's objectives.

1.6. Interpretation of Contract Documents

Discrepancies in, and/or omissions from the Specifications or other Contract Documents, or questions as to their meaning shall be immediately brought to the attention of City by submission of a written request to City for an interpretation or correction. Such submission, if any, must be made pursuant to Section C above. Any interpretation of the Contract Documents will be made only by written response issued by the City. Proposals shall include complete compensation for all items that are noted in the Contract Documents as the responsibility of the Proposer.

1.7. Addenda

Substantive City changes to the requirements contained herein will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP will be posted on the City's website at www.sonomacity.org/bidsrfps/ and will be incorporated into the terms and conditions of any resulting Agreement. The City shall not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instruction or communication. Any addenda under this RFP will be issued no later than 72 hours prior to the Proposal due date. It is the responsibility of Proposers to make sure they have received all addenda prior to submitting their proposal. If an Addendum is issued less than 72 hours before the Proposal due date, the Proposal due date will be extended.

1.8. Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the Proposer in: a) preparing its proposal in response to this RFP; b) submitting that proposal to City; c) negotiating with City any matter related to this proposal; or d) any other expenses incurred by the Proposer prior to date of award, if any. The City shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its Proposal. Proposer shall not include any such expenses as part of its proposal.

1.9. Authority to Withdraw RFP and/or Not Award Agreement

The City reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any Proposer responding to this RFP.

1.10. Agreement Type and Term

The City intends to award an On-Call Master Agreement for the provision of services described under this RFP on an as-needed basis, with services to be compensated based on the hourly rates requested in this RFP. Although the City expects that tree maintenance and Certified Arborist consulting services will be needed, execution of an On-Call Master Agreement does not guarantee that any service requests will be made by the City. The City intends to award a three-year contract for this work, beginning July 1, 2024 and extending through June 30, 2027. Each year shall have an annual maximum amount of \$200,000. After the first year of the contract, contractor will be entitled to request, with justification, increases in rates for the following contract year. ***For Certified Arborist consulting services only, that annual maximum contract amount will be \$50,000.*** The form of agreement for tree maintenance contractor is provided in Attachment B. ***The form of agreement for Certified Arborist Consulting only is provided in Attachment C.***

1.11. Right to Reject Proposals

The City expressly reserves the right to postpone the opening of proposals for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s). Any award made for this engagement will be made to the Proposer which, in the opinion of the City, is best qualified to provide the requested services.

1.12. Joint Offers

Where two or more Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. The City intends to contract with a single Contractor and not a joint venture.

1.13. Subcontractors

The successful Proposer will be required to self-perform at least 90% of the work. Proposers must designate the name, license number, and location of any subcontractor who will perform work or render services for the Proposer for this project, and briefly describe the nature of services anticipated to be provided by each listed subcontractor.

1.14. Conflict of Interest

By submitting a proposal, Proposer certifies that to the best of its knowledge, no City employee or office of any public agency interest has any pecuniary interest in the Contractor's business and that no person associated with Proposer has any interest that would conflict in any manner with the performance of duties specified as a part of this project. Proposer represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this project.

1.15. Agreement and Insurance

The form of agreement which the successful Proposer, as the Contractor, will be required to execute to provide tree maintenance services is provided in Attachment B. ***The form of agreement which the successful Proposer, as the Contractor, will be required to execute to provide only Certified Arborist consulting services is provided in Attachment C.*** Prior to commencement of any services, the Contractor must also secure worker's compensation insurance and comprehensive general liability insurance, including auto and contractual liability coverage, as noted in the standard agreements provided in Attachment B and C.

1.16. Business License Requirement

The Proposer and any subcontractors must also obtain and maintain in effect a valid City of Sonoma Business License prior to the commencement of work, and during the entire time that work is being performed under the agreement. Information about obtaining a City business license is available at www.sonomacity.org/business-licenses/. The cost of obtaining a business license with the City is considered a pre-contractual expense as discussed in this RFP.

1.17. Required License

At time of the Proposal Due Date, Proposer and any subcontractor(s) must possess a current and valid California Contractor State Licensing Board (CSLB) license(s) in at least one of the following classifications: **C-49 Tree and Palm Contractor or C-61/D49 Limited Specialty—Tree Service**. Proposer must also have on-staff at least one employee with a current, valid credential as a Certified Arborist issued by the International Society of Arboriculture (ISA). The submitted Proposal shall identify by name the Certified Arborist(s) who will be available and would be assigned to provide tree maintenance / consultation services to the City. ***For Certified Arborist consulting services only, Proposer must have on-staff at least one employee with a current, valid credential as a Certified Arborist issued by the International Society of Arboriculture (ISA).***

1.18. DIR Registration

Pursuant to California Labor Code Sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations ("DIR"). No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the DIR to perform public work. If awarded a contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the DIR for the duration of the Project. ***This section does not apply for consultants submitting proposals to provide only Certified Arborist consulting services.***

1.19. Prevailing Wage

Each worker performing Work under this Contract shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor shall post a copy of the applicable prevailing rates at the Worksite.

This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR), under Labor Code Section 1771.4. Contractors will be required to upload certified payrolls to the DIR website. If requested a certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative, to the City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code. ***This prevailing wage section does not apply for Proposers who will only provide only Certified Arborist consulting services.***

1.20. Non-Discrimination

Proposer agrees that in carrying out its responsibilities under this agreement, and in particular with regard to the employment of persons and subcontractors working on the project, it will not discriminate on the basis of race, color, creed, national origin, religion, sex, age, or handicap.

1.21. Public Records Act

All responses to this RFP will become public records after notice of intent to award under the California Public Records Act (Cal. Government Code section 6250 et seq.). All documents that you send to the City will be subject to disclosure if requested by a member of the public. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Sonoma may not be in a position to establish that the information that a Contractor submits is a trade secret. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Do not mark your entire proposal as "Confidential." If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City will provide Contractors who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. The City will not be responsible for any legal or other costs incurred by Contractors seeking to shield a portion of their proposal from public disclosure.

2. SCOPE OF SERVICES

2.1. Introduction

The City of Sonoma is requesting proposals from qualified contractors to provide on-call tree trimming and Certified Arborist consulting services. The Contractor's crew(s) will work as directed by the City's representative on City-owned trees located on City properties, easements and rights-of-ways. For emergency service requests, Contractor crew(s) must be able to respond within two (2) hours of being called out by the City's representative.

2.2. Specifications

Requested services will typically consist of tree trimming/pruning, tree removal (including stump removal), removal of existing stumps, tree inspection/assessment reports, and traffic control as needed. Other as-needed services may include tree planting, root pruning and root barrier installation, emergency response services (typically to address downed trees), Certified Tree Arborist services, and as-needed support to install and remove seasonal banners at selected locations. The detailed scope of work and project specifications are provided in Attachment A. ***For consultants submitting proposals to provide only Certified Arborist consulting services, please refer to Section 5 of the Specifications.***

3. PROPOSAL FORMAT AND CONTENT

Proposals must follow the format and content requirements described in this section.

3.1. Format

Proposals should be as concise as possible, and shall not exceed a grand total of fifty (50) sheets of paper, where every single sheet will be counted toward the total, except the front and back covers of the Proposal. Except for the front and back covers, each sheet may be printed double-sided if desired, so that there are two pages of content on one actual sheet of paper. The primary body text font size shall not be smaller than 12 points. Each sheet/page size shall be 8.5 inches wide by 11 inches tall.

3.2. Content

At minimum the proposal must include the following sections in the order described below:

3.2.1. Cover Letter

Provide a brief cover letter addressed to Mike Berger, Public Works Director, not to exceed two (2) pages and include the following content:

- a. Legal name of Contractor, physical and mailing address, telephone number and email address of Contractor's office from which this project will be managed.
- b. Brief statement of the Contractor's understanding of the project, and summary of key elements of the proposal.
- c. Brief summary of the Contractor's key qualifications and ability to provide the requested products and services.
- d. Acknowledgement of receipt of all RFP addenda, if any.
- e. Statement that the proposal shall remain valid for a period of not less than ninety (90) days.
- f. Signature by an individual authorized to bind the Contractor to the terms of the proposal.

3.2.2. Contractor Profile and Resources/Capabilities

Provide information about the Contractor, including overall company profile, as well as the company's resources and capabilities to perform the requested services.

3.2.3. Project Organization, Staffing and Subcontractors

Describe who will manage and work on this project. Identify the Project Manager who will be the key contact with the City of Sonoma. Provide an organization chart showing all proposed key project team members. Describe the responsibilities of each person on the project team. Provide brief descriptions of the qualifications and certifications of key

personnel including their responsibilities on this project and experience on other similar projects. Team member resumes may be included, but should be concise. Also list in this section any proposed subcontractors.

3.2.4. Project Understanding and Work Plan

Describe Contractor's understanding of the City, knowledge of local conditions, the work or services to be provided, and the objectives to be accomplished. Describe Contractor's proposed approach and methods to deliver cost effective and high quality tree maintenance services per the scope of work/project specifications provided in this RFP. Identify methods that Contractor will use to ensure quality control, as well as budget and schedule control for the project. Identify any special issues or problems that are likely to be encountered in this project and how the Contractor proposes to address them.

3.2.5. Related Experience

List at least three (3) projects where Proposer performed tree maintenance services of similar scope to this RFP within the past five (5) years. For each example provide: a) brief description of services; b) approximate contract amount and length of contract term; c) names of the team members of the proposed project team who worked on the reference projects, as well as their respective responsibilities; and d) name of agency/client and contact information for the primary agency/client representative for each project that can be contacted for a reference. Proposer must have recent experience (within the past five (5) years) providing tree trimming and tree maintenance services in a prime contractor role with a public governmental agency. ***Proposers for Certified Arborist consulting services only, recent experience (within the past five years) providing Certified Arborist consulting services to a public governmental agency is preferred, but not required.***

3.2.6. Cost and Price Proposal

As part of the cost and price proposal, the Contractor shall submit proposed pricing to provide the services for the work described in the specifications provided in Attachment A. The Contractor shall complete the "Proposal Form" provided in Attachment D and may provide in the proposal any narrative if needed to explain the prices. It is anticipated that the City will issue a fixed unit-price contract to complete the Scope of Work. The Proposal prices shall include all costs, taxes, and fees necessary to provide the requested services, including but not limited to, furnishing all transportation, materials, equipment, and all management, supervision, permits, labor and services, except as may be provided otherwise in the Contract Documents. Contractor agrees to perform the described work for the prices indicated in the Cost Proposal Form. Prior to the start of the second year of the contract, contractor may request a reasonable increase in rates, with justification. ***Proposers for Certified Arborist consulting services do not need to complete the Cost Proposal Form, but instead need only provide an hourly consulting rate(s) in the Proposal.***

3.2.7. Statement of Compliance

Contractors must submit a Statement of Compliance with all parts of the RFP and the City's Standard Maintenance Services Agreement (refer to Attachment B) terms and conditions. ***For Certified Arborist consulting services only, the Statement of Compliance shall be for the City's Standard Professional Services Agreement provided in Attachment C.*** The Statement of Compliance must declare either:

- a. This proposal is in compliance with the Request for Proposal and the City's Standard Maintenance Services Agreement and no exceptions to either are proposed; or
- b. This proposal is in compliance with the Request for Proposal and the City's Standard Maintenance Services Agreement except for the items listed. For each exception and/or suggested change, the Contractor must include: 1) the suggested change in the RFP or proposed rewording of the contractual obligations; 2) reasons for submitting the proposed exception or change; and 3) any impact the change or exception may have on project costs, scheduling or other considerations.

3.2.8. Other Information

Contractor may include any other information considered to be relevant to the proposal. However, choose the additional information carefully, because this section of the proposal should not constitute the bulk of the proposal.

4. EVALUATION CRITERIA AND PROCESS

4.1. Evaluation Process and Selection

Proposals will be evaluated on the basis of their responsiveness to the requirements of this RFP. All proposals received by the specified due date and time will be reviewed to ensure compliance with the proposal format and content requirements provided in this RFP. Non-compliant or non-responsive proposals may be rejected and eliminated from further consideration.

The City will evaluate all compliant and responsive proposals to determine the Proposer that best meets the needs of the City. The City shall not be obligated to accept the lowest priced proposal, and the City may make an award in the best interests of the City after all factors are considered, including, but not limited to, the demonstrated competence, experience and qualifications of the Proposer.

At the conclusion of the evaluation process the recommended proposal will be submitted to the City Council for contract approval.

4.2. Evaluation Criteria

The City will evaluate and rank proposals according to the following criteria and scoring:

Evaluation Criterion	Maximum Points
<u>Contractor capability:</u> Qualification and experience of staff, quantity and types of equipment available to provide the requested services.	25
<u>Cost proposal:</u> Consideration of contractor's proposed rates. The lowest proposed cost is a significant factor, but not the sole criterion for contract award.	25
<u>Reference checks:</u> Evaluation of work quantity and quality performed for similar projects for current and former clients that indicate high levels of satisfaction and effectiveness	20
<u>Project experience:</u> Previous experience providing high-quality tree maintenance services to cities and/or other public governmental agencies.	10
<u>Project approach:</u> Contractor's understanding of the City, knowledge of local conditions, the work or services to be provided, objectives to be accomplished and proposed approach to providing high quality and cost effective tree maintenance services.	10
<u>Response time:</u> Ability to respond to Certified Arborist consulting and emergency tree service requests in a timely manner. In addition, a well-organized communication and reporting system that demonstrate an ability to complete tasks efficiently and effectively.	10
Total	100

**ATTACHMENT A
SPECIFICATIONS**

**CITY OF SONOMA
TREE MAINTENANCE SPECIFICATIONS**

1. General Requirements

1.1. Working Hours

Normal working hours shall be between the hours of 7:00 AM and 4:00 PM, Monday through Friday, except City observed holidays and emergencies. Except for emergencies, no night, weekend or holiday work is to be scheduled without prior written permission from the City.

Each contract year the City will provide the Contractor with a list of City holidays, which generally include New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

1.2. Time and Locations

Billable time starts at the job site. The Contractor is to keep the City informed of working locations so that the City representative can inspect the work throughout the process. The City will provide Contractor with five (5) calendar days of notice when requesting regular, non-emergency tree service requests.

1.3. Records

The Contractor shall keep accurate records concerning all of his employees or agents and provide the City within fifteen (15) days of the effective date of this agreement with names and telephone numbers of employees to be called in emergency. Any changes in the work force that impact this report shall be addressed to the City immediately.

The Contractor shall complete a monthly maintenance report indicating work performed and submit this completed report monthly to the City's representative. This report should also contain a description, including per hour labor, equipment, and materials breakdowns and costs used to accomplish any additional work, which the contractor deems to be beyond the scope of the contract. Under ordinary conditions, payment for this work shall not be authorized unless the additional work and costs thereof, are first approved in writing by the City. This report shall be due no later than five (5) working days preceding the beginning of each month.

The Contractor shall permit the City to inspect and audit its books and records at any reasonable time.

No later than the 5th working day following the end of a contract month, the Contractor shall submit in a City approved electronic form, a report of all work completed, including addresses

or locations of tree services, the class of trim, the day the work was started and completed, and any other pertinent information.

1.4. Communication and Emergency Response

The Contractor's Representative and each Crew Forman shall have a cellular telephone. The phone number shall be given to the City's representative. The Contractor's representative and each Crew Forman shall be accessible for communication during normal work hours.

Contractor shall provide capabilities for twenty-four (24) hour per day, seven (7) days a week service. Contractor shall provide the City with names and telephone numbers (not an answering service) of at least two qualified persons who can be contacted by City representatives when emergency conditions occur outside of normal working hours (i.e. nights, weekends and holidays). These Contractor representatives shall respond to and be at site of said emergency within two (2) hours from receiving notification.

Upon arriving at an emergency situation, it shall be the responsibility of the Contractor to eliminate all unsafe conditions, which would adversely affect the health, safety or welfare of the public.

1.5. Coordination and Contact with the Public

Contractor and his employees shall at all times conduct themselves in a professional manner and any contact with the public shall be professional and courteous. When approached by a member of the public Contractor may respond to basic questions to explain the nature of and reason work is being conducted. Contractor should not make guesses, assumptions or offer other opinions, and instead should refer other questions to the City's representative.

Contractor is responsible for posting "temporary no-parking" signs at least forty-eight (48) hours before using the parking lane for tree trimming purposes. In the case of work requiring mass removal of green waste, which may interfere with the use by residents or businesses of their driveways, suitable provisions shall be made by the Contractor at such time to provide access to said driveways. Efforts shall be made by the Contractor to minimize the duration of said blocking and to notify the residents of this need well in advance. Further, the Contractor shall provide access to each residential or commercial establishment each evening.

1.6. Safety

Contractor shall at all times adhere to all applicable safety practices, rules and regulations. All arboricultural work conducted by the contractor and its representatives shall conform to the American National Standards for Arboricultural Operations – Safety Requirements ANSI Z133.1. All arboricultural work conducted by the contractor and its representative shall conform to current applicable California Occupational Safety and Health Administration (CAL-OSHA) laws and regulations.

The Contractor shall maintain all work sites free of hazards to persons and/or property resulting from his operations. Any hazardous condition noted by the Contractor, which is not a result of his operations, shall be immediately reported to the City's representative. Contractor shall cooperate with the City during the investigation of an accident and submit a complete written report to the City within twenty- four (24) hours following the occurrence.

1.7. Traffic Control

Contractor shall conform to all California Vehicle Code and CAL OSHA requirements and operating rules at all times this Contract is in effect. Contractor shall conduct all work in a manner that will allow continuous traffic flow on all streets at all times. In situations where it is necessary to restrict traffic flow, the Contractor shall contact the City representative prior to start of work. Contractor shall be responsible for supplying and using all safety equipment necessary to close or delineate traffic lanes to through traffic. This is to include a high visibility arrow board. Prior to closing lanes and/or interfering with the flow of traffic, Contractor shall seek the approval of the City representative. Forty-eight (48) hour notification is required. City shall set days of the week and times when traffic lanes may be closed.

Warning signs, lights and devices used for traffic handling shall be in accordance with the "Work Area Traffic Control Handbook" ("WATCH") published by Building News Inc., and made part of these specifications. The method in which signs, barriers, and other miscellaneous traffic devices are used during construction shall be in accordance with the publication mentioned. All signs shall be illuminated or reflectorized when they are used during hours of darkness. All cones, pylons, barricades, or posts used in the diversion of traffic shall be provided with flashers or other satisfactory illumination if left in place during hours of darkness.

During the progress of the work, adequate provisions shall be made by the Contractor to accommodate the normal traffic over the public streets as to cause a minimum of inconvenience to the general public. Means of ingress and egress shall be provided for occupants of adjacent property, with convenient access to driveway, housing or building.

The Contractor shall be required to provide and maintain barriers, guards and lights when and where it may be necessary to do so in order to effectively guard the public from danger as a result of the work being done. He shall also be required to post proper notices and signals to the public regarding detours and the condition of the work under construction, all in accordance with applicable provisions of the vehicle code.

Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, service stations, motels, fire and police stations, hospitals, and establishments of similar nature. Access to these facilities shall be continuous and unobstructed unless otherwise approved by the City's representative.

Safe and adequate pedestrian zones and public transportation stops, as well as pedestrian crossings of the work at intervals not exceeding 300 feet shall be maintained unless otherwise approved by the City's representative.

Vehicular access to residential driveways shall be maintained to the property line except when necessary construction precludes such access for reasonable periods of time.

The Contractor shall cooperate with the various parties involved in the delivery of mail and the collection and removal of trash and garbage to maintain existing schedules for these services.

During tree trimming operations, the Contractor shall post "No Parking" signs forty-eight hours in advance of commencing work and they shall be placed at regular intervals 150 feet in advance and 150 feet beyond the restricted area.

1.8. Recycling / Disposal

The Contractor shall recycle, to the maximum extent practicable, all cuttings, weeds, leaves, trash and other debris from the operation as work progresses.

Contractor shall recycle all generated green waste/debris (e.g. cuttings, branches, wood, leaves, weeds, etc.) using the City-provided and designated green waste bin at the City's Corporate Yard located at 19728 8th St. E., Sonoma, CA 95476. Contractor shall also use appropriate City-provided and designated bins for any recyclable non-green waste/debris and/or any non-recyclable waste/debris.

Contractor may not offer for donation or sale any green waste as defined above generated under the performance of this contract. City may direct Contractor to dump or spread Contractor-generated wood chips or mulch at selected City designated sites.

1.9. Preservation of Property / Repair of Damage

Existing improvements in areas adjoining the property whereon tree pruning work is being performed shall be protected from injury or damage resulting from operations of the Contractor. Contractor shall be responsible for repairing any damage caused by its operations.

2. Contractor Requirements

2.1. Contract Supervision and Coordination

The Contractor's representative and each Crew Forman shall meet with the City's representative on at least a monthly basis at the City Public Works office to discuss all contract activities, including review of status and progress of tasks and to establish areas

needing attention.

2.2. Contractor's Office

Contractor shall operate and maintain an office with phone number that is answered by Contractor's employee(s) during normal business hours. During all other times, a telephone answering service shall be utilized and the answering service shall be capable of contacting the Contractor by phone. Contractor shall maintain a valid electronic mail system and respond to all emails generated from the City no later than the end of the following business day.

2.3. Licenses and Certifications

The Contractor and any subcontractor(s) must possess a current and valid California Contractor State Licensing Board (CSLB) license(s) in at least one of the following classifications: **C-49 Tree and Palm Contractor or C-61/D49 Limited Specialty—Tree Service**. Contractor and any subcontractors must obtain and maintain in effect a valid City of Sonoma Business License prior to commencement of work, and during the entire time that work is being performed under the contract.

2.4. Contractor Personnel and Supervision

The Contractor shall provide a work force sufficient to complete the work as it is specified. Work shall be performed by competent and experienced workers. Contractor must have on-staff at least one employee with a current, valid credential as a Certified Arborist issued by the International Society of Arboriculture (ISA). Although not required, it is preferred that Contractor also has on staff employees with ISA certifications as Tree Climber and/or Tree Worker Climber.

The work force shall include a thoroughly skilled, experienced and competent supervisor who shall be responsible for adherence to the specifications. Supervisors and foremen must communicate effectively both in written and oral English, and shall be present at all times during contract operations. Any order given to these supervisors or foremen shall be deemed as delivered to the Contractor.

All personnel working at the outlined areas shall be of good character, neat appearance, and in appropriate dress. All Contractor personnel shall wear a shirt (and jacket or sweatshirt as weather conditions dictate) with Contractor's company name and logo.

2.5. Equipment Staging and Storage

Contractor must use his own storage and staging area (whether owned, leased or rented) for equipment used under this contract. Contractor is not permitted to park his vehicles or equipment overnight on City streets unless approved in writing in advance by the City's

representative.

2.6. Contractor's Equipment

Contractor must own all of the equipment proposed to be used under this contract. However, contractor may rent specialty equipment as-needed with the prior written approval of the City representative. All vehicles and equipment used in conjunction with the work shall be maintained in neat, clean, and orderly manner and shall be in good working order. Equipment must be clearly marked with the Contractor's company name and phone number.

3. Tree Maintenance Requirements

3.1. Tree Trimming / Pruning

Conduct work in conformance with current American National Standards Institute (ANSI) Standard A300 (Part 1), latest edition. The following specifications shall be complied with in all cases unless written authorization is obtained from the City's representative.

Contractor's Certified Arborist shall be responsible for ensuring that the contractor's crews are performing work according to applicable standards and industry best practices. All trees will be inspected by a Certified Arborist or Certified Tree Worker for hazardous conditions that include dead, diseased, dying, or weak limbs, or other defects that could be hazardous to human health, safety and welfare or property. This will include narrow crotches, included bark and decay of limbs or the main trunks of the tree. The City shall be notified of such conditions within 24 hours in writing. The Arborist shall inspect all trees for balance and in those cases where trees are severely unbalanced and in need of crown reduction, thinning, or other work to achieve a balanced tree, the City must be notified. The Certified Arborist does not need to be on-site at all times while work is being performed, but must be able to inspect the work and ensure that it meets City specifications and applicable industry standards.

Tree trimming/pruning practices shall include:

- No spurs will be allowed on living trees at anytime.
- Pruning cuts shall be clean and smooth; leaving the bark at the edge of the cut firmly attached to the wood. A three-cut process, sometimes known as "jump-cutting", shall be used to remove larger limbs in order to avoid stripping or tearing of the bark, and to minimize unnecessary wounding.
- Any vine plant growing on trees shall be removed at ground level.
- Trees shall be pruned to remove all dead wood of 1" in diameter or greater. In addition all diseased, dying, structurally weak, decayed, or otherwise defective limbs 2" in diameter shall be removed.
- When removing a dead branch, the final cut shall be made just outside the branch bark ridge and collar of live callus or woundwood tissue. If the collar has grown out along the branch stub, only the dead stub shall be removed; the live collar shall remain

intact.

- When removing a parent leader or limb to a lateral branch, the final cut shall be made as close to parallel as possible with the branch bark ridge and the lateral limb. The cut shall be made as close to the branch bark ridge as possible without cutting into it. Care shall be taken to avoid damaging the lateral limb when the final cut is made.
- Remove the weaker or less desirable of crossed or rubbing branches. Such removal shall not leave large open spaces in the general outline of the tree.
- If it is necessary to reduce the length of a branch, the final cut shall be made just beyond (without violating) the branch bark ridge of the branch being cut to. The remaining branch shall be no less than one third (1/3) the diameter of the branch being removed, and with enough foliage to assume the terminal role.
- Final drop-crotch cuts shall be made outside the branch bark ridge on the main stem or lateral branch. The remaining branch shall be no smaller than one third (1/3) the diameter of the portion being removed. The removed portion shall be pruned out to direct the remaining growth away from conductors.
- Palm trimming shall be achieved by removing all living and dead fronds that are initiated from the head of the palm tree with an angle greater than 30 degrees in relation to a horizontal plane at the head of the palm tree.
- Fronds shall be severed close to the petiole base without damaging living trunk tissue.
- Street and sidewalk clearance standards shall be achieved through crown raising. Crown raising is the removal of lower branches in order to provide clearance for vehicles, pedestrians, and bicyclists. Only those branches that must be removed to achieve the established height clearance standard shall be pruned. All such cuts shall be pruned back to the nearest lateral found above the set minimum height standard. When possible trees shall be pruned in such a manner that at least one half (1/2) of the foliage will be on branches that originate in the lower two thirds of the tree. Similarly, branches should have even distribution of foliage along their lengths. This will ensure a well-formed, tapered structure and will uniformly distribute stress within the tree.
- Over sidewalks limbs shall be raised to a minimum of 7 feet.
- Over streets tree limbs trees shall be pruned to obtained 14 feet of clearance over traffic lanes. Limbs may be allowed to grow from main stems at heights of not less than eight feet and gradually increase in height to 14 feet over traffic lanes.
- Visibility clearance for streetlights or signage shall be achieved through “windowing” through the foliage of a tree, rather than severely raising or reducing its crown. Only those branches that need to be removed to attain the visibility clearance desired shall be pruned. All such cuts shall be pruned back to the nearest lateral found away from the structure that is to be cleared.
- No topping of any tree.
- No Lion-tailing of any tree.

3.2. Tree Planting

Plantings include the tree, root barrier (when required by specification), stakes, ties, and complete installation. Planting list will be compiled by the City's representative. Trees will be tagged from nurseries by City's representative and delivered to the City's Public Works facility from which contractor will pick up and perform planting. Typically, a minimum size of 24" box tree will be planted.

Planting pit shall be dug twice the width and the same depth of the root ball. Before placing the tree in the planting pit the Contractor shall examine the root ball for injured roots and canopy for broken branches. Damaged roots should be cleanly cut off at a point just in front of the break. Broken branches should be cut out of the canopy making sure that the branch collar is not damaged.

Any damage to the adjacent sidewalks or parkways caused by the Contractor shall be repaired at the expense of the Contractor.

Tree shall be placed in the planting pit with its original growing level (the trunk flare) at the same height of the surrounding finished grade. In grass-covered parkways, the top of the root ball shall be level or slightly higher than the surrounding soil. In a concrete tree well, the root ball shall be three (3) inches below the level of the finished surface of the concrete.

Backfill material should be no more than 10% commercial soil amendment mixed with the native soil. Place fertilizer tablets in the corners of the bottom of the hole. Eliminate all air pockets while backfilling the planting hole by watering the soil as it is placed in the hole. Soils shall not be compacted by tamping it down by foot.

Trees that are planted in parkways shall have a 4-6 inch high water retention basin built around the tree capable of holding at least ten (10) gallons of water. In a concrete tree well, soil should be raked against the edge of the concrete to create a sloping basin. Immediately after planting, the tree shall be watered thoroughly by filling the water retention basin twice.

All trees shall be staked with two (2) wooden lodge poles connected together by four (4) ties per pole. All lodge poles shall be upright and straight. The minimum size of the lodge poles shall be 10-foot long, with 1 1/2 inch diameter. The tree ties shall be placed at 1/3 and 2/3 of the trunk height. Stakes shall not penetrate the root ball and shall be driven into the ground approximately 24- 30 inches below grade.

In some cases, root barriers may be required. The City will make this determination. Should a root barrier be required, the Contractor will install a mechanical barrier. The barrier shall be a minimum of 24 inches in depth and placed in a circular fashion one (1) foot from the tree's root system. Root barriers shall be included in the unit price of the tree.

Tree spacing shall be at a minimum distance of 30 feet to a maximum of 50 feet (subject to City discretion). Planting will be at a minimum of 30 feet from the back of curb return on an

approach to an intersection and 20 feet from the end of the curb on the exit side (subject to City discretion). Plant 20 feet minimum from edge of approach. Plant 20 feet minimum from street light standards, power lines and fire hydrants. Plant 15 feet from house walks and utility meters. Center the tree between the sidewalks and curb. Where there is no parkway, plant tree in the center of the public right of way. Clean up all trash and any soil or dirt spilled on any paved surface at the end of each work day. When a palm species greater than twenty feet in height is replaced the replacement palm shall be field grown and a minimum of twenty feet of Brown Trunk Height.

3.3. Tree and Stump Removal

3.3.1. Tree Removal

City prepares list of trees to be removed, marks trees, notifies homeowners and submits list to the Contractor. Contractor calls U.S.A. and prepares internal work order. Crew removes tree and hauls all debris.

3.3.2. Stump Removal

Stump removals shall be inclusive with tree removals. Contractor may also be requested to remove existing stumps. Contractor calls U.S.A. and prepares internal work order. Stumps shall be ground to a depth of eighteen (18) inches. 100% of stump and grinding chips must be removed prior to backfilling. All holes will be backfilled, as well as, all debris cleaned up and hauled off on the same day the stump removal is completed. Removal of tree and stumps shall be conducted in good workmanlike manner in accordance with the standards of the arboriculture profession. All tree parts are to be loaded into transport vehicles. The vehicles must have front and side solid enclosure and the top and rear tarped or otherwise tightly enclosed. The transporting of the tree parts must be made so that no debris escapes during transport. Branches, suckers, barks and other tree parts that are chipped are to be hauled to the disposal site during the workday and shall not be left on the worksite.

3.4. Root Pruning

Root pruning shall be done with guidance from a certified ISA Arborist and mechanical root barrier installed in pruned area when adjacent to hardscape. Roots shall be pruned adjacent to the edge of the sidewalk, curb and gutter or other improvements as indicated. Root pruning cuts adjacent to the sidewalk shall be four (4) inches wide, twelve (12) inches deep, and a minimum of eight (8) feet in each direction from the centerline of the tree as measured from the top of the sidewalk or other improvements. Root pruning cuts adjacent to the curb shall be four (4) inches wide, eighteen (18) inches deep, and a minimum of eight (8) feet in each direction from the centerline of the tree as measured from the top of the curb or other improvements. Root pruning equipment shall be specifically designed for this purpose with cutting teeth sharpened adequately to sever roots in a clean manner and equipped with

padded tracks or rubber tires to prevent scraping or marking the sidewalk.

After the pruning cut has been completed, all cuts shall be backfilled immediately upon completion of root pruning at each location. Backfill material shall consist of soil and/or mulch from root pruning and shall be free of rocks and other debris. All debris generated by these operations shall be immediately removed from the site and properly disposed of by the Contractor.

The Contractor shall repair or replace all utility service connections or sprinkler systems within the right-of-way that are damaged or removed as a result of the root pruning operation. Repairs shall be implemented immediately and completed by the end of the same working day.

The Contractor shall be responsible for contacting Underground Services Alert for locating underground utilities prior to beginning the pruning operation.

3.5. Pest Control / Herbicide Application

If needed, Contractor may be requested to apply pesticides and/or herbicides, which must be done per written recommendation from the Contractor's Pest Control Advisor prior to use. All materials must be properly labeled and certified for intended use, and applied by appropriately licensed/certified personnel. Proper and legal disposal of any and all pesticides used is solely the responsibility of the Contractor.

3.6. Contractor Furnished Materials

All material and equipment furnished by the Contractor shall be new, high grade, and free from defects and imperfections, unless otherwise hereinafter specified. Workmanship shall be in accord with the best standard practices. Both materials and workmanship shall be subject to the approval of the City's representative. All materials used shall be approved in advance by the City's representative.

The actual cost of all material passed on to the City shall be wholesale cost of the material. The wholesale cost shall be the actual cost paid by the Contractor reflecting the best price, including discount available. At no time shall the cost of materials exceed retail cost from the current price list, minus the discount rates.

The total cost of materials shall include the following: 1) Wholesale cost (retail cost minus Contractor's discount) as stated above; 2) applicable sales taxes; and 3) a markup of 15% maximum for all overhead costs and profits.

The City reserves the right to purchase materials directly and make available to the Contractor.

4. Environmental Protection and Compliance

4.1. Migratory Bird Act

Contractor is responsible for complying with the Federal Migratory Bird Treaty Act and California Fish and Game Code, and any other related regulations, to avoid impacts to nesting birds and active bird nests. Contractor shall bypass and leave undisturbed any or all trees scheduled for trimming or removal if active nesting birds or eggs are found to occupy the tree(s). Contractor shall have in place procedures to inspect planned work areas prior to the start of work for reasonable assurance that no nesting birds or active bird nests are present. If despite such pre-work precautions an active nest is encountered during tree work, Contractor shall immediately stop work and notify the City's representative.

4.2. Stormwater Runoff Pollution

No material generated during tree work operations is permitted to enter any storm drain. The Contractor is required to abide by the City of Sonoma Municipal Code Chapter 13.32 Storm Water Management and Discharge Control Quality Management (www.sonoma.municipal.codes/SMC/13.32), including all applicable Best Management Practices (BMPs) for the duration of the contract.

4.3. Air and Noise Pollution

Contractor shall comply with all applicable air pollution control rules, regulations, ordinances and statutes. The Contractor shall comply with the provisions of the Clean Air Act, as amended (42 W.S.C. 1957 et seq.). Contractor shall comply with requirements of the City of Sonoma Municipal Code Chapter 9.56 Noise (www.sonoma.municipal.codes/SMC/9.56) and Chapter 9.60 Leaf Blowers (www.sonoma.municipal.codes/SMC/9.60).

5. Certified Arborist Services

Tree inspection and risk assessment reports shall be conducted in accordance with ANSI A300 (Part 9) standards along with the companion publication Best Management Practices published by the ISA. Contractor shall inspect tree within 72 hours of request by City, and submit completed report within 7 calendar days of the tree inspection.

6. Crew Labor Rates

The labor rate shall be for a crew that consists of at least three (3) qualified people, one (1) chipper truck, one (1) chipper, one (1) aerial tower and all necessary power and hand tools.

Regular hours for crew labor rate shall be for the "Normal Working Hours" as defined in Specifications Section 1.1. Overtime hours for crew labor rate shall be all evening and weekend hours outside of the "Normal Working Hours," as well as City holidays per Section

1.1. Regular and overtime crew rates shall be for non-emergency work that is requested by City. Emergency response rate shall be for work requested by City that requires a crew to be on site within two (2) hours, regardless of day or time of day. Crew labor rates and emergency response rates begin when the crew arrives on the site and begins work, and end at the completion of the work.

7. Banner Installation and Removal

The City has banner brackets attached to 20 street light poles around the perimeter of Plaza Park. Contractor will provide a two-person crew with aerial lift truck to install and remove City provided banners which are 30 inches by 94 inches. On average, the City replaces banners on these street light poles about once per month. In addition, once per year the City installs wreaths on the 20 street light poles around Plaza Park (mounted above the existing banners) and about 20 streetlights on Broadway between Napa Street and McDonell Street. The City will provide wreaths and wreath brackets. Wreaths are typically installed in November and removed in January.

**ATTACHMENT B
MAINTENANCE SERVICES AGREEMENT**

MAINTENANCE SERVICE AGREEMENT
Providing Payment of Prevailing Wage

(City of Sonoma / [Company or Individual])

1. IDENTIFICATION

This MAINTENANCE SERVICE AGREEMENT (“Agreement”) is entered into by and between the City of Sonoma, a California municipal corporation (“City”), and _____, [enter Contractor’s (company’s) name], a _____ [insert Contractor’s state of incorporation] _____ [insert Contractor’s legal status, e.g., individual, partnership, corporation, nonprofit public benefit corporation, limited liability company, etc.] (“Contractor”) (collectively, “parties”).

2. RECITALS

- 2.1** City has determined that it requires the following recurring maintenance services from a contractor: _____ [insert description of contractor’s maintenance services, i.e., landscaping, tree-trimming, brush removal, etc.].
- 2.2** Contractor represents that it is fully qualified to perform such maintenance services by virtue of its experience and the training, education and expertise of its principals and employees. Contractor further represents that it is willing to accept responsibility for performing such maintenance services in accordance with the terms and conditions set forth in this Agreement.
- 2.3** City has relied upon the ability and training of the Contractor as a material inducement to enter into this Agreement. Contractor shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by City shall not operate as a waiver or release. Contractor represents and warrants to City that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Contractor to practice its profession, and (b) it shall, at its sole cost, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Contractor to perform its services. Contractor shall indemnify and hold

harmless the City from and against any and all claims or expenses caused or occasioned directly or indirectly by Contractor's failure to so perform.

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

3. DEFINITIONS

- 3.1 "Agreement Administrator": The Agreement Administrator for this project is [Name and title of City employee]. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Contractor.
- 3.2 "Approved Fee Schedule" means such compensation rates as are set forth in Contractor's _____ [insert date fee schedule submitted to City] fee schedule to City attached hereto as "Exhibit B" and fully 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.
- 3.3 "Commencement Date" means _____ [enter commencement date].
- 3.4 "Contractor Project Administrator" is _____ [enter name of Contractor's contact for purposes of Agreement], and will be the principal point of contact for the Contractor.
- 3.5 "Maximum Amount": The highest total compensation and costs payable to Contractor by City under this Agreement. The Maximum Amount under this Agreement is _____ Dollars (\$_____).
- 3.6 "Scope of Services": Such maintenance services as are set forth in Contractor's _____ [enter Contractor's proposal date] proposal to City attached hereto as Exhibit A and incorporated herein by this reference.

3.7 "Termination Date" means _____ [enter termination 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 15 ("Termination") below. Contractor may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

5. CONTRACTOR'S DUTIES

5.1 **Services.** Contractor shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In performing services under this Agreement, Contractor shall coordinate all contact with City through its Agreement Administrator. All changes and/or extra work shall be performed and paid for in accordance with the following:

5.1.1 Only the City [enter department head] or City Council may authorize extra and/or changed work. Contractor expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Contractor to secure the Council's or City [enter department head]'s authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in the Maximum Amount due to such unauthorized work and Contractor thereafter shall be entitled to no compensation whatsoever for performance of such work.

5.1.2 If the Contractor is of the opinion that any work s/he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, s/he shall promptly notify the Agreement Administrator of this opinion. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work, it shall provide extra compensation to the Contractor on a fair and

equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the City and the Contractor. Such Supplemental Agreement shall be executed by the Contractor and be approved by the City in accordance with its purchasing policy.

5.1.3 In the event City determines that such work does not constitute extra work, Contractor shall not be paid extra compensation above that provided herein and if such determination is made by City staff, this determination may be appealed to the City Council as long as a written appeal is submitted to the City Manager within five (5) days after the staff's determination is received by the Contractor. Any written appeal shall include a description of each and every ground upon which Contractor challenges the staff's determination. The City Council's decision shall be final.

5.2 Professional Standards. Contractor shall perform all work to the highest standards of Contractor's profession and in a manner reasonably satisfactory to City. Contractor shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).

5.3 Coordination with City. In performing services under this Agreement, Contractor shall coordinate all contact with City through its Agreement Administrator.

5.4 Budgetary Notification. Contractor shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Contractor shall concurrently inform the Agreement Administrator, in writing, of Contractor's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.

5.5 Business License. Contractor shall obtain and maintain in force a City business license for the duration of this Agreement.

- 5.6 No Known Relationships.** Contractor represents that it has no known relationships with third parties, City Council members, or employees of City which would (i) 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, (ii) prevent Contractor from performing the terms of this Agreement, or (iii) present a significant opportunity for the disclosure of confidential information.
- 5.7 Avoid Conflicts.** During the term of this Agreement, Contractor shall not perform any work for another person or entity for whom Contractor was not working at the Commencement Date if both (i) such work would require Contractor to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Contractor's performance of such work.
- 5.8 Campaign Contribution Disclosure.** This Agreement is subject to Government Code Section 84308, as amended by SB 1439. That statute requires Contractor to disclose any campaign contribution by the Contractor or the Contractor's agent to City Councilmembers or other City officials of more than two-hundred and fifty dollars (\$250) in the aggregate within the preceding twelve (12) months. Contractor shall provide a signed copy of the attached Campaign Contribution Disclosure Form, Exhibit C, with Contractor's execution of this Agreement.
- 5.9 City Retains Responsibility for Contracting.** Contractor's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement.

- 5.10 Appropriate Personnel.** Contractor has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Contractor or under its supervision or by subcontractor(s) of Contractor, and all personnel engaged in the work shall be qualified to perform such services. The Contractor Project Administrator shall be Contractor's project administrator and shall have direct responsibility for management of Contractor's performance under this Agreement. No change shall be made in Contractor's project administrator without City's prior written consent.
- 5.11 Prevailing Wages.** This Agreement is subject to the prevailing wage law as more fully set forth in section 8 (Labor Code), for all work performed under this Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Contractor acknowledges that prevailing wage determinations are available for work performed under this Agreement.
- 5.12 Permits and Approvals.** Contractor shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary, if any, for Contractor's performance of this Agreement including, but not limited to, professional licenses and permits, and building and safety permits and inspections.
- 5.13 Notification of Organizational Changes.** Contractor shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Contractor's firm or of any subcontractor. Change of ownership or control of Contractor's firm may require an amendment to this Agreement.
- 5.14 Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the

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

6. SUBCONTRACTING AND ASSIGNMENT

- 6.1 General Prohibition on Assignment.** This Agreement covers services of a specific and unique nature. Except as otherwise provided herein, Contractor shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2 Contractor Responsible.** Contractor shall be responsible to City for all services to be performed under this Agreement.
- 6.3 Subcontracting.** Contractor shall not subcontract any portion of the performance contemplated and provided for herein unless (1) such subcontracting is specifically described in the proposal attached hereto or the City provides prior written approval and (2) the subcontractor's billing rates are identified in the Approved Fee Schedule, Exhibit B. In any event, Contractor shall supervise all work subcontracted by Contractor in performing the services described in the Scope of Services and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work shall not relieve Contractor from any of its obligations under this Agreement with respect to the services described in the Scope of Services. Contractor is obligated to ensure that any and all subcontractors performing any services under this Agreement shall be fully insured in all respects and to the same extent as set forth under Section 12 (Insurance), to City's satisfaction.
- 6.4 Compensation for Subcontractors.** Contractor shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

7. COMPENSATION

- 7.1 General.** City agrees to compensate Contractor for the services provided under this Agreement, and Contractor agrees to accept payment, the

Maximum Amount in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Contractor shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

- 7.2 Invoices.** Contractor shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. 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. Contractor shall include a copy of each subcontractor invoice, if any, for which reimbursement is sought in the invoice.
- 7.3 Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Contractor except as otherwise required by law. Contractor shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4 Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Contractor.

8. LABOR CODE

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

classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification.

- 8.3 Forfeiture.** Contractor shall forfeit as a penalty to City Two Hundred Dollars (\$200.00), or any greater penalty provided in the Labor Code, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under this Agreement employed in the performance of the Scope of Services by Contractor or by any subcontractor of Contractor in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor.
- 8.4 Apprentices.** Contractor shall comply with the provisions of Labor Code section 1777.5 concerning the employment of apprentices on public works projects. Contractor shall be responsible for ensuring compliance by its subcontractors with Labor Code section 1777.5.
- 8.5 Payroll Records.** Pursuant to Labor Code section 1776, Contractor and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code section 1811 and Labor Code section 1815 for any work performed by his or her employees on the public works project. The payroll records shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code section 1776.
- 8.6 8-Hour Work Day.** This Agreement is subject to 8-hour work day and wage and hour penalty laws, including, but not limited to, Labor Code section 1810 and Labor Code section 1813. Contractor and any subcontractor(s) of Contractor shall strictly adhere to the provisions of the Labor Code regarding 8-hour work day and 40-hour work week

requirements, and overtime, Saturday, Sunday, and holiday work. Pursuant to the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Contractor's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to City \$25.00, or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the work by Contractor or by any subcontractor(s) of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.

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

9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Contractor in the performance of this Agreement (such written material and electronic files are collectively known as "written products") shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Contractor may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Contractor.

10. RELATIONSHIP OF PARTIES

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

10.2 No Agent Authority. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Contractor, its officers, employees and agents shall not have any power to bind or commit the City to any decision or course of action, and Contractor, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the City or that it or they have the power to bind or commit the City. Neither

City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

10.3 Independent Contractor Status. Under no circumstances shall Contractor or its employees look to the City as an employer. Contractor shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Contractor's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Contractor specifically assumes the responsibility for making such a determination. Contractor shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.

11. INDEMNIFICATION

11.1 Definitions. For purposes of this Section 11, "Contractor" shall include Contractor, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Contractor or its subcontractors, in the performance of this Agreement. "City" shall include City, its officers, agents, employees and volunteers.

11.2 Contractor to Indemnify City. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Contractor's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Contractor or failure to comply with any provision in this Agreement.

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. Contractor shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City.

- 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. Contractor 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 Contractor with respect to a claim. If the City requests a defense deposit, Contractor shall provide it within 15 days of the request.
- 11.6 Waiver of Statutory Immunity.** The obligations of Contractor under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 Indemnification by Subcontractors.** Contractor 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 Contractor's behalf. If Contractor fails to obtain such indemnity obligations from others, Contractor agrees to indemnify, hold harmless and defend City from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor's subcontractors or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 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. Contractor's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 11.9 Indemnification of CalPERS Determination.** In the event that Contractor claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS

benefits on behalf of Contractor, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11.10 No Employment Benefits. Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Contractor shall not qualify for or become entitled to, and hereby agrees to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in CalPERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for CalPERS benefits.

12. INSURANCE

12.1 Insurance Required. Contractor 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 Contractor. 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 Contractor's obligation to provide them. Contractor shall file with City:

- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: *[insert project name]*.
- Documentation of Best's rating acceptable to the City.
- Original endorsements effecting coverage for all policies required by this Agreement.
- Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

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

- Professional Liability Insurance: \$2,000,000 per occurrence,
\$4,000,000 aggregate

- General Liability:
 - General Aggregate: \$4,000,000
 - Products Comp/Op Aggregate \$4,000,000
 - Personal & Advertising Injury \$2,000,000
 - Each Occurrence \$2,000,000
 - Fire Damage (any one fire) \$ 100,000
 - Medical Expense (any 1 person) \$ 10,000

- 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 City as additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (i) the minimum coverage and limits specified in this Agreement, or (ii) 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. Contractor 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 Contractor will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.

- 12.6 Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks. Automobile liability insurance shall be evidenced by ISO Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned).
- 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 three years after the completion of the work by one of the following: (i) renewal of the existing policy; (ii) an extended reporting period endorsement; or (iii) 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 Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 12.9 Subcontractors.** Contractor shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement provided however, that the Agreement Administrator may waive the provision of Errors and Omissions Insurance by subcontractors in his or her sole discretion.
- Contractor agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Contractor's expense.
- 12.10 Proof of Renewal.** Contractor shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement 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.

12.11 Additional Insured Endorsements. The City, its City Council, Commissions, officers, and employees of Sonoma must be endorsed as an additional insured for each policy required herein, including the general liability and automobile policies, other than Professional Errors and Omissions, for liability arising out of ongoing and completed operations by or on behalf of the Contractor. Contractor's insurance policies shall be primary as respects any claims related to or as the result of the Contractor's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Contractor agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.

12.12 Failure to Maintain Coverage. In the event any policy is canceled prior to the completion of the project and the Contractor does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Contractor under this Agreement. Failure of the Contractor to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.

12.13 Notices. Contractor shall provide immediate written notice if (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; (iii) or the deductible or self-insured retention is increased. Contractor shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Contractor shall provide proof that cancelled or expired

policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Sonoma, Attn: [insert department or individual], No. 1 The Plaza, Sonoma, California 95476.

- 12.14 Contractor's Insurance Primary.** The insurance provided by Contractor, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.
- 12.15 Waiver of Subrogation.** Contractor hereby waives all rights of subrogation against the City. Contractor shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
- 12.16 Report of Claims to City.** Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted to Contractor's insurer in connection with the services under this Agreement.
- 12.17 Premium Payments and Deductibles.** Contractor must disclose all deductibles and self-insured retention amounts to the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement. City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Contractor shall be responsible for all premiums and deductibles in all of Contractor's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.

12.18 Duty to Defend and Indemnify. Contractor’s duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

13. MUTUAL COOPERATION

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

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

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 Contractor’s and City’s regular business hours; (ii) the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing); or (iii) the day of delivery if emailed to the email address listed below and simultaneously deposited in the U.S. mail, postage prepaid, to the address(es) listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

[Name]
City of Sonoma
[Department/Division]
No. 1 The Plaza
Sonoma, CA 95476
Telephone: (707) 938-3681
Facsimile: (707) [Fax Number]
Email: [Insert]

If to Contractor:

[Name]
[Company]
[Address]
[Address]
Telephone: [Insert]
Facsimile: [Insert]
Email: [Insert]

With courtesy copy to:

David J. Ruderman, Sonoma City Attorney
Colantuono, Highsmith & Whatley, PC
670 W. Napa Street, Suite F
Sonoma, CA 95476
Telephone: (707) 986-8091
Facsimile: (707) 509-7295
Email: druderman@chwlaw.us

15. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.14 (Records), section 11 (Indemnification), paragraph 12.8 (Claims-Made Policies), paragraph 13.2 (Contractor Cooperation in Defense of Claims), and paragraph 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. The City may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Contractor of the services required. Notice of termination of this Agreement shall be given in writing to Contractor and shall be sufficient and complete when same is emailed to Contractor and simultaneously deposited in the United States mail postage prepaid and certified, addressed as set forth in section 14 of this Agreement. The Agreement shall be terminated upon receipt of the notice of termination by Contractor. Contractor 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 Contractor Termination. Contractor may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.

16.3 Compensation Following Termination. Upon termination, Contractor shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of

the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.

16.4 Remedies. City retains any and all available legal and equitable remedies for Contractor'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 Contractor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Contractor.

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 Contractor for performance of this Agreement are deemed confidential and Contractor shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.

18.2 Conflicts of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

18.3 Non-assignment. Both parties shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the other party's prior written consent, and any attempt to do so shall be

void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Contractor.

- 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.** Contractor shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation, or any other unlawful basis, including without limitation, the City's Non-Discrimination Policy adopted as Resolution #25-2019. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to 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, sexual orientation, or any other unlawful basis. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 18.8 Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Contractor unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Contractor of any breach of any

provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.

- 18.9 Excused Failure to Perform.** Contractor shall not be liable for any failure to perform if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Contractor.
- 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.** In the event of a dispute arising out of the terms of this Agreement, including any action brought to declare the rights granted herein or to enforce any of the terms of this Agreement, the party prevailing in such dispute shall be entitled to all reasonable costs and litigation expenses actually incurred, including fees of attorneys and expert witnesses.
- 18.12 Venue.** The venue for any litigation shall be Sonoma County, California and Contractor hereby consents to jurisdiction in Sonoma County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.13 Living Wage.** Nonprofit service contractors which receive contracts from the City of \$75,000 or more in a 12-month period, and for-profit service contractors who receive contracts from the City of \$10,000 or more in a 12-month period, provided they have more than six employees, may be subject to the City's Living Wage Ordinance. Sub-contractors with \$50,000 or more in annual gross receipts may also be subject to the Living Wage Ordinance. Unless otherwise exempt in accordance with the provisions of the Ordinance (Sonoma Municipal Code Chapter 2.70), this Agreement is

subject to applicable provisions of the Living Wage Ordinance of the City as amended from time to time and available on the City's website.

18.14 Counterparts; Electronic Signatures. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

18.15 Recitals. The Recitals are incorporated by this reference.

[Signatures on following page]

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“City”
City of Sonoma

“Contractor”
[Name of Company or Individual]

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

By: _____
Signature

By: _____
Rebekah Barr, MMC, City Clerk

Printed: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

By: _____
David J. Ruderman, City Attorney

Date: _____

WORKER’S COMPENSATION INSURANCE ACKNOWLEDGEMENT

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker’s Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

Date: _____

Signature

Printed Name

Title

**“EXHIBIT A”
Scope of Work**

“EXHIBIT B”
Approved Fee Schedule

“EXHIBIT C”
Campaign Contribution Disclosure Form

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Cities are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, the Campaign Disclosure Form must be completed and returned to the City with your application.

No City Councilmember or other City official shall accept, solicit, or direct a campaign contribution of more than \$250 from any party¹ or agent² for 12 months after the City approves a contract. This prohibition commences when an application is filed, or a proceeding is otherwise initiated.

A party to a City proceeding shall disclose on the record of the proceeding any campaign contribution of more than \$250 by a party or agent to any City Councilmember or other City official during the preceding 12 months. No party to a City proceeding, or agent, shall make a campaign contribution to a City Councilmember or other City official during a proceeding and for 12 months after the City approves a contract.

A City Councilmember or other City official who received a campaign contribution of more than \$250 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall abstain from participating in the proceeding. However, if he or she returns the portion of a campaign contribution in excess of \$250 within 30 days of knowing about the contribution and the relevant proceeding, he or she may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.

² "Agent" is defined as a person who represents a party in connection with a proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

To determine whether you or your agent made a campaign contribution of more than \$250 to a City Councilmember or other City official within the preceding 12 months, you must aggregate all such contributions.

Names of current City Councilmembers and other City officials are available on the City's website. If you have questions about Government Code Section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the City Clerk.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, or agent, who has contributed more than \$250 to any City Councilmember or other City official within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution:

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of City Councilmember or other City official to whom contribution was made:

1. _____
2. _____
3. _____

(d) Check here If no contributions have been made to any Councilmember or other City official in the preceding 12 months.

(e) I certify that the above information is provided to the best of my knowledge.

Printed Name _____

Signature _____

Date _____ Phone _____

ATTACHMENT C
PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

(City of Sonoma / [Company or Individual])

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Sonoma, a California municipal corporation (“City”), and _____ [enter consultant’s (company’s) name], a _____ [insert consultant’s state of incorporation] _____ [insert consultant’s legal status, e.g., individual, partnership, corporation, nonprofit public benefit corporation, limited liability company, etc.] (“Consultant”) (collectively, “parties”).

2. RECITALS

2.1 City has determined that it requires the following professional services from a consultant: _____ [insert 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 City has relied upon the professional ability and training of the Consultant as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by City shall not operate as a waiver or release. Consultant represents and warrants to City that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Consultant to practice its profession, and (b) it shall, at its sole cost, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall indemnify and hold

harmless the City from and against any and all claims or expenses caused or occasioned directly or indirectly by Consultant's failure to so perform.

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

3. DEFINITIONS

- 3.1 "Agreement Administrator": The Agreement Administrator for this project is [Name and title of City employee]. 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.
- 3.2 "Approved Fee Schedule" means such compensation rates are set forth in the Consultant's _____ [insert date fee schedule submitted to City] fee schedule to City attached hereto as "Exhibit B" and fully 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.
- 3.3 "Commencement Date" means _____ [enter commencement date].
- 3.4 "Design Professional": A Design Professional is any individual satisfying one or more of the following: (1) licensed as an architect pursuant to Business and Professions Code 5500 et seq., (2) licensed as a landscape architect pursuant to Business and Professions Code 5615 et seq., (3) licensed as a professional land surveyor pursuant to Business and Professions Code 8700 et seq., or (4) registered as a professional engineer pursuant to Business and Professions Code 6700 et seq.
- 3.5 "Design Professional Project Administrator" is _____ [enter name of Consultant's contact for purposes of Agreement], and will be the principal point of contact for the Consultant.
- 3.6 "Maximum Amount" means the highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum

Amount under this Agreement is _____ Dollars
(\$ _____).

3.7 “Scope of Services” means such professional services as are set forth in Consultant’s _____ [insert consultant’s proposal date] proposal to City attached hereto as Exhibit A and incorporated herein by this reference.

3.8 “Termination Date” means _____ [enter termination 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 in writing by mutual agreement of the parties or terminated earlier in accordance with 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. In performing services under this Agreement, Consultant shall coordinate all contact with the City through its Agreement Administrator. All changes and/or extra work shall be performed and paid for in accordance with the following:

5.1.1 Only the City [enter department head] or City Council may authorize extra and/or changed work. Consultant expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Consultant to secure the Council’s or City [enter department head]’s authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in the Maximum Amount due to such unauthorized work and Consultant thereafter shall be entitled to no compensation whatsoever for performance of such work.

5.1.2 If the Consultant is of the opinion that any work s/he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, s/he shall promptly notify the Agreement Administrator of this opinion. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work, it shall provide extra compensation to the Consultant on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the City and the Consultant. Such Supplemental Agreement shall be executed by the Consultant and be approved by the City in accordance with its purchasing policy.

5.1.3 In the event City determines that such work does not constitute extra work, Consultant shall not be paid extra compensation above that provided herein and if such determination is made by City staff, this determination may be appealed to the City Council as long as a written appeal is submitted to the City Manager within five (5) days after the staff's determination is received by the Consultant. Any written appeal shall include a description of each and every ground upon which Consultant challenges the staff's determination. The City Council's decision shall be final.

5.2 Consultant Standards. Consultant shall perform all work to the highest 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.).

5.3 Coordination with City. In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.

5.4 Budgetary Notification. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the Maximum Amount unless specifically approved in advance and in writing by City.

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.

- 5.5 Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.6 No Known Relationships.** Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (i) 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, (ii) prevent Consultant from performing the terms of this Agreement, or (iii) present a significant opportunity for the disclosure of confidential information.
- 5.7 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 both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.8 Campaign Contribution Disclosure.** This Agreement is subject to Government Code Section 84308, as amended by SB 1439. That statute requires Consultant to disclose any campaign contribution by the Consultant or the Consultant's agent to City Councilmembers or other City officials of more than two-hundred and fifty dollars (\$250) in the aggregate within the preceding twelve (12) months. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form, Exhibit C, with Consultant's execution of this Agreement.
- 5.9 City Retains Responsibility for Contracting.** Consultant's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent

or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement.

- 5.10 Appropriate Personnel.** Consultant represents that it 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. Design Professional Project Administrator 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.
- 5.11 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.
- 5.12 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.
- 5.13 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.

- 5.14 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. City shall pay Consultant for work performed by its subcontractors (including labor) 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 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. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.

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 or 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 WAGE

8.1 Prevailing Wage Law Applies. 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 including the design and preconstruction phases of a covered public works project. This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code.

8.2 Indemnification; Prevailing Wage Law. 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, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by 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. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision or course of action, and Consultant, its officers, employees and agents shall not

represent to any person or party that it or they are acting as agents of the City or that it or they have the power to bind or commit the City. Neither City nor any of its agents shall have control over the conduct of 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.

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 officials, officers, agents, employees and volunteers.
- 11.2 Consultant to Indemnify City.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold harmless, the City, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that actually or allegedly arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the City, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the

City, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law, subject to the caveats included in this Agreement. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the City, its officers, officials, employees and volunteers.

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 negligence, active negligence or willful misconduct of the City. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

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. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend City, from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 11.8 Offset.** City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this section 11 of this Agreement and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 11.9 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.

11.10 Civil Code. The parties are aware of the provisions of Civil Code Section 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this section 11 complies therewith.

11.11 Indemnification of CalPERS Determination. In the event that Consultant 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.

11.12 No Employment Benefits. Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Consultant shall not qualify for or become entitled to, and hereby agrees to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in CalPERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for CalPERS benefits.

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: \$2,000,000 per occurrence, \$4,000,000 aggregate
- General Liability:
 - General Aggregate: \$4,000,000
 - Products Comp/Op Aggregate \$4,000,000
 - Personal & Advertising Injury \$2,000,000
 - Each Occurrence \$2,000,000
 - Fire Damage (any one fire) \$ 100,000
 - Medical Expense (any 1 person) \$ 10,000
- 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 City as additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (i) the minimum coverage and limits specified in this Agreement, or (ii) 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. Automobile liability insurance shall be evidenced by ISO Form Number CA 0001 covering Code 1 (any auto) or, if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned).
- 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 three years after the completion of the work by one of the following: (i) renewal of the existing policy; (ii) an extended reporting period endorsement; or (iii) 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 Subcontractors.** Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this

Agreement provided however, that the Agreement Administrator may waive the provision of Errors and Omissions Insurance by subcontractors in his or her sole discretion.

Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.

12.10 Proof of Renewal. Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement 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.

12.11 Additional Insured Endorsements. The City, its City Council, Commissions, officers, and employees of Sonoma must be endorsed as an additional insured for each policy required herein, including the general liability and automobile policies, other than Professional Errors and Omissions, 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 of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. 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.

12.12 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.

12.13 Notices. Contractor shall provide immediate written notice if (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; (iii) 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 Sonoma, Attn: [insert department or individual], No. 1 The Plaza, Sonoma, California 95476.

12.14 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.

12.15 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. 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 City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

12.16 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.

12.17 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.

12.18 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; (ii) the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing); or (iii) the day of delivery if emailed to the email address listed below and simultaneously deposited in the U.S. mail, postage prepaid, to the address(es) listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

[Name]
City of Sonoma
[Department/Division]
No. 1 The Plaza
Sonoma, CA 95476
Telephone: (707) 938-3681
Facsimile: (707) [Fax Number]
Email: [Insert]

If to Consultant:

[Name]
[Company]
[Address]
[Address]
Telephone: [Insert]
Facsimile: [Insert]
Email: [Insert]

With courtesy copy to:

David J. Ruderman, Sonoma City Attorney
Colantuono, Highsmith & Whatley, PC
670 W. Napa Street, Suite F
Sonoma, CA 95476
Telephone: (707) 986-8091
Facsimile: (707) 509-7295
Email: druderman@chwlaw.us

15. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.14 (Records), section 11 (Indemnity), paragraph 12.8 (Claims-Made Policies), paragraph 13.2 (Consultant Cooperation in Defense of Claims), and paragraph 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. The City may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Consultant of the services required. Notice of Termination of this Agreement shall be given in writing to Consultant and shall be sufficient and complete when same is emailed to Consultant and simultaneously deposited in the United States mail postage prepaid and certified, addressed as set forth in section 14 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by

Consultant. If City should terminate this Agreement, the Consultant shall be compensated for all work satisfactorily performed prior to time of receipt of termination notice, and shall be compensated for materials ordered by the Consultant or his/her employees, or services of others ordered by the Consultant or his/her employees prior to receipt of Notice of Termination whether or not such materials or final instruments of services of others have actually been delivered, provided that the Consultant or its employees are not able to cancel such orders for materials or services of others. Compensation for the Consultant in the event of termination by the City shall be determined by the City [enter department head] in accordance with the percentage of project completed. In the event that this Agreement is terminated pursuant to this paragraph 16.1, Consultant shall not be entitled to any additional compensation over that provided herein; nor shall Consultant be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the City pursuant hereto.

16.2 Consultant Termination. Consultant may terminate this Agreement upon thirty (30) days written notice to the City only for good cause. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the City's last payment shall be relinquished to the City. The City may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

16.3 Termination for Material Breach. Should the Consultant fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the City may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. Consultant shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by City by virtue of the Consultant's breach of this Agreement.

16.4 Remedies. In no event shall Consultant be entitled to receive more than the Maximum Amount that would be paid to Consultant for the full

performance of the services required by this Agreement as provided in paragraph 3.6 above and as otherwise provided in 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. Both parties shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the other party'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, or any other unlawful basis, including without limitation, the City's Non-Discrimination Policy adopted as Resolution #25-2019. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to 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, sexual orientation, or any other unlawful basis. 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.** In the event of a dispute arising out of the terms of this Agreement, including any action brought to declare the rights granted herein or to enforce any of the terms of this Agreement, the party prevailing in such dispute shall be entitled to all reasonable costs and litigation expenses actually incurred, including fees of attorneys and expert witnesses.
- 18.12 Venue.** The venue for any litigation shall be Sonoma County, California and Consultant hereby consents to jurisdiction in Sonoma County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.13 Living Wage.** Nonprofit service contractors which receive contracts from the City of \$75,000 or more in a 12-month period, and for-profit service contractors who receive contracts from the City of \$10,000 or more in a 12-month period, provided they have more than six employees, may be subject to the City's Living Wage Ordinance. Sub-contractors with \$50,000 or more in annual gross receipts may also be subject to the Living Wage Ordinance. Unless otherwise exempt in accordance with the provisions of the Ordinance (Sonoma Municipal Code Chapter 2.70), this Agreement is subject to applicable provisions of the Living Wage Ordinance of the City as amended from time to time and available on the City's website.
- 18.14 Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by

electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

18.15 Recitals. The Recitals are incorporated by this reference.

[Signatures on following page]

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“City”
City of Sonoma

“Consultant”
[Name of Company or Individual]

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

By: _____
Signature

By: _____
Rebekah Barr, MMC, City Clerk

Printed: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

By: _____
David J. Ruderman, City Attorney

Date: _____

“EXHIBIT A”
Scope of Work

“EXHIBIT B”
Approved Fee Schedule

“EXHIBIT C”
Campaign Contribution Disclosure Form

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Cities are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, the Campaign Disclosure Form must be completed and returned to the City with your application.

No City Councilmember or other City official shall accept, solicit, or direct a campaign contribution of more than \$250 from any party¹ or agent² for 12 months after the City approves a contract. This prohibition commences when an application is filed, or a proceeding is otherwise initiated.

A party to a City proceeding shall disclose on the record of the proceeding any campaign contribution of more than \$250 by a party or agent to any City Councilmember or other City official during the preceding 12 months. No party to a City proceeding, or agent, shall make a campaign contribution to a City Councilmember or other City official during a proceeding and for 12 months after the City approves a contract.

A City Councilmember or other City official who received a campaign contribution of more than \$250 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall abstain from participating in the proceeding. However, if he or she returns the portion of a campaign contribution in excess of \$250 within 30 days of knowing about the contribution and the relevant proceeding, he or she may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.

² "Agent" is defined as a person who represents a party in connection with a proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

To determine whether you or your agent made a campaign contribution of more than \$250 to a City Councilmember or other City official within the preceding 12 months, you must aggregate all such contributions.

Names of current City Councilmembers and other City officials are available on the City's website. If you have questions about Government Code Section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the City Clerk.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, or agent, who has contributed more than \$250 to any City Councilmember or other City official within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution:

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of City Councilmember or other City official to whom contribution was made:

1. _____
2. _____
3. _____

(d) Check here If no contributions have been made to any Councilmember or other City official in the preceding 12 months.

(e) I certify that the above information is provided to the best of my knowledge.

Printed Name _____

Signature _____

Date _____ Phone _____

**ATTACHMENT D
COST PROPOSAL FORM**

**COST PROPOSAL FORM
CITY OF SONOMA
ON-CALL TREE MAINTENANCE AND CERTIFIED ARBORIST SERVICES**

The undersigned agrees that this Cost Proposal constitutes a firm offer to City which shall remain valid for the number of calendar days indicated in the RFP. Proposer certifies that it is licensed in accordance with the law providing for the registration of Contractors:

Proposer Name _____

CSLB License No. _____ Class of License _____ Exp. Date _____

DIR No. _____

The undersigned acknowledges receipt, understanding and full consideration of the following addenda to the Contract Documents (insert issue date of any addenda issued by City for this solicitation):

Addendum No. 1 dated _____

Addendum No. 2 dated _____

Proposer has attached the completed schedule of Rates and Fees.

I hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted in connection with this Proposal and all of the representations made herein, including Proposer's license number and expiration date, are true and correct. I further certify that the signatory below is authorized to submit this Proposal and bind the Proposer to the terms of these Contract Documents.

Name of Proposer: _____

Authorized Signature: _____

Printed Name: _____

Date: _____

COST PROPOSAL: ON-CALL TREE MAINTENANCE AND CERTIFIED ARBORIST SERVICES

Contractor Name: _____

Item No.	Description	Hourly Rate
1	Tree Crew – regular working days/hours Specification Section 6	\$
2	Tree Crew – overtime Specification Section 6	\$
3	Tree Crew – emergency response Specification Section 6	\$
4	Certified Arborist Consulting Specification Section 5	\$
5	Banner install & removal crew Specification Section 7	\$

Also attach a sheet listing hourly rates (regular working days/hours) for key labor classifications and equipment types.