



CITY OF SONOMA
REQUEST FOR PROPOSAL
PROFESSIONAL ENGINEERING DESIGN SERVICES FOR THE
CITYWIDE SAFETY BICYCLE AND PEDESTRIAN IMPROVEMENTS
PROJECT NO. T-6
AUGUST 12, 2024

Prospective Consultants:

The City of Sonoma (City) is interested in receiving proposals from Professional Services Consultants (Consultants) to provide civil engineering services as described in this Request for Proposal (RFP).

Schedule of Events from Issuance of the RFP to Award of Contract:

RFP Distributed	August 12, 2024
Questions Due	August 19, 2024
Responses to Questions	August 23, 2024
Proposals Due	August 29, 2024
Contract Authorization	September 4, 2024 (anticipated)

City Point of Contact:

The sole source of contact regarding this RFP is Ashley Cotter, Public Works Administrative and project Manager. Individuals or firms interested in submitting a proposal shall not contact other members of the City of Sonoma staff or Council members in connection with the RFP prior to the announcement of the Consultant selected.

Pre-Proposal Questions:

Questions regarding this RFP must be submitted to Ashley Cotter at acotter@sonomacity.org. Questions received by any other means will not receive a response. Questions will only be accepted until 5:00 p.m. on August 19, 2024. A document responding to all submitted questions will be provided no later than 5:00 p.m. on August 23, 2024.

Proposal Closing Date: 5:00 p.m. on August 29, 2024

Three (3) bound hardcopies and one (1) electronic copy of Consultant's proposal must be received by the City not later than 5:00 p.m. on August 23, 2024. Electronic copies of proposals can be submitted to Ashley Cotter at acotter@sonomacity.org. Proposals not received by this time and date will not be accepted. All proposals will become part of the official files of the City of Sonoma and will be returned.

CITY OF SONOMA PUBLIC WORKS DEPARTMENT
CITY HALL, NO. 1 THE PLAZA
SONOMA, CA 95476

CITY OF SONOMA

REQUEST FOR PROPOSAL

PROFESSIONAL ENGINEERING DESIGN SERVICES FOR THE CITYWIDE SAFETY BICYCLE AND PEDESTRIAN IMPROVEMENTS PROJECT NO. T-6

AUGUST 12, 2024

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ATTACHMENT

1. Standard Professional Services Agreement

CITY OF SONOMA
REQUEST FOR PROPOSAL
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I. PROJECT INFORMATION

A. COMMUNITY & CITY ORGANIZATION OVERVIEW

The City of Sonoma is located in the southernmost end of Sonoma County, about 22 miles south of Santa Rosa and 45 miles north of San Francisco. The City was incorporated in 1883 and encompasses about 2.7 square miles within the Sonoma Valley. The mediterranean climate makes the valley not only one of the world's finest grape-growing regions and a wonderful place to live for the City's nearly 11,000 residents. The City has more than 1,300 businesses that serve as the economic hub for the greater Sonoma Valley.

The City of Sonoma is a full-service general law city governed by a Council-Manager form of government. The City Council serves as the policy-making board for the municipality, and the City Manager is considered the Chief Executive Officer (CEO) of the municipal corporation. The City has 45 employees in several key departments including City Manager's Office/Administrative Services, Public Works, and Community Development (Planning & Building). The City contracts for police and fire protection services.

B. PURPOSE

The intent of this RFP is to select and enter into an agreement with a Consultant to provide civil engineering design services for the City of Sonoma Citywide Safety Bicycle and Pedestrian Improvements Project. Background on the project and an overview of the Scope of Services are provided in the following sections.

C. PROJECT BACKGROUND AND OVERVIEW

In 2004, Sonoma County approved the Sonoma County Traffic Relief Act ("Measure M"), a 1/4 cent sales tax for transportation. In 2020, voters approved extending the Measure M tax with no increase in the existing tax rates via the Go Sonoma Act. The Go Sonoma Expenditure plan includes four programs in two different categories:

Category 1: Fix roads, fill potholes, improve safety and usability for all, which includes smooth and maintained roads (38% of funding), and move traffic and improve safety (27% of funding).

Category 2: Improve alternatives to cars, fight climate change, which includes increase bus service, affordability, and first/last mile connections (23% of funding), and build bikeways and pathways (12% of funding). All projects require a match of at least 15%.

The 2023 Go Sonoma Strategic Implementation Plan addressed projects across Sonoma County, including the City of Sonoma's Citywide Safety Bicycle and Pedestrian Improvements Project. Funding in the amount of \$1,610,000 is programmed for Fiscal Year 2026 Funding Cycle 1 under the Go Sonoma Build Bikeways and Pathways (BBP) program. The City will provide a match of \$577,000 for a total project cost of \$2,187,000. The City's project, identified as CIP Project No. T-6, will construct improvements to create a high-quality bike and pedestrian network, provide safe and well-maintained transportation infrastructure for pedestrians and bicyclists, focus on strategies that support a walkable community. Project components consist of the construction of a new bicycle path to Sassarini Elementary School, safety upgrades to the pedestrian crossing at Fifth Street West, and safety improvements at the crossing locations between the City of Sonoma's main bicycle path and City streets.

The City wishes to proceed with design of the project so that it can be constructed in Fiscal Year 2026. The Consultant will provide inspection/assessment of existing bicycle/pedestrian paths, recommendations for repair and/or rehabilitation of existing paths, survey and design for a new path and improvement of existing crossings, preparation of design plans and construction bid documents, and construction bid phase support as further described in the following section.

D. SCOPE OF SERVICES

The following summary of the scope of services is not inclusive and is only intended to be used as an indication of the minimum services to be provided. It is the City's expectation that the Consultant shall include in its proposal all work necessary for the completion of the project, based on Consultant's understanding of the project and design experience on similar projects.

Task 1 – Project Management

- Provide overall project management including coordination and communication with the City of Sonoma.
- Develop project work plan, schedule, and budget.
- Perform quality control reviews and quality assurance.
- Conduct and document meetings with City staff as needed.
- Prepare meeting notes and monthly project progress reports (including schedule and budget updates).

Task 2 – Preliminary Design (35% Design Submittal)

- Inspect existing bicycle and pedestrian paths to develop recommendations for safety improvements and repair/rehabilitation methods.
- Conduct site investigations for the proposed new bicycle/pedestrian path and develop at least two conceptual drawing alternatives.

- Conduct site investigations to assess the existing 5th Street West crossing and all locations where the main bicycle/pedestrian path crosses City streets to develop recommended safety and ADA improvements.
- Prepare initial conceptual drawings and preliminary cost estimates.
- Identify and map existing utilities and site features within the proposed project footprint.
- Based on conceptual alternatives developed, provide recommendation to City as to the level of CEQA clearance required for the various improvements. The City anticipates that most improvements will be exempt from CEQA, except the new bike/pedestrian path which may require a Negative Declaration or Mitigated Negative Declaration.

Task 3 – Intermediate Design (65% Design Submittal)

- Revise design based on feedback from the City of Sonoma.
- Prepare detailed construction drawings, specifications, and cost estimates.
- If needed, prepare CEQA clearance document.
- Identify potential for additional improvements and any conflicts.

Task 4 – Draft Final Design (95% Design Submittal)

- Revise design based on 65% submittal feedback.
- Prepare revised detailed construction drawings, specifications, and cost estimates.

Task 5 – Final Plans, Specifications and Estimate Package

- Address City comments on 95% Design Submittal) and prepare Final (Bid Set) Plans, Specifications and Cost Estimate, signed and stamped by a registered Professional Engineer in the State of California.
- Perform internal quality assurance/quality control review prior to submittal to City.

Task 6 – Bid Phase Support

- Provide support during bidding phase.
- Respond to requests for information and clarify design documents.
- Prepare addenda as necessary.

Task 7 – Public Meeting Support

- Develop materials for public meetings.
- Assume attendance at up to five (5) public meetings (e.g., City Council, City Traffic Safety Committee, etc.).

II. GENERAL CONDITIONS AND INSTRUCTIONS

The following general conditions and instructions apply to this RFP:

A. GENERAL REQUIREMENTS

Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the Professional Services Consultant (Consultant) in:

- Preparing a proposal in response to this RFP;
- Submitting that proposal to the City of Sonoma;
- Negotiating with the City of Sonoma on any matter related to this RFP, proposal and/or contractual agreement; and
- Any other expenses incurred by the Consultant prior to the date of an executed contract.

The City of Sonoma shall not, in any event, be liable for any pre-contractual expenses incurred by any Consultant. In addition, no Consultant shall include any such expenses as part of the price proposed to conduct the scope of work for this project.

Authority to Withdraw RFP and/or Not Award Contract

The City of Sonoma 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 Consultant responding to this RFP. 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).

The City reserves the right, at its sole discretion, to determine whether any aspect of the proposal response satisfactorily meets the criteria established in the RFP. The City reserves the right to seek additional information and/or clarification from the prospective Consultant, the right to confer with any prospective Consultant and the right to reject any or all responses with or without cause. In the event that the RFP is withdrawn by the City for any reason, the City shall have no liability to any prospective Consultants for any costs or expense incurred with the preparation of proposals in response to this RFP. The City reserves the right, at its sole discretion, to waive any irregularities or informality.

Right to Reject Proposals

The City of Sonoma reserves the right to reject any or all proposals submitted. Any award made for this engagement will be made to the Consultant which, in the opinion of the City, is best qualified to conduct the project.

Ownership of Deliverables

All materials prepared under the contract become the sole property of the City of Sonoma and may not be reproduced without permission by the City.

Proposal Evaluation Criteria

Proposals will be evaluated on the basis of the response to all provisions of this RFP. The City of Sonoma may use some or all of the following criteria in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance:

- a. Qualifications and experience of team members;
- b. Experience in completing projects similar in size, scope and purpose;
- c. Understanding of the services requested;
- d. Demonstrated record of success on work previously performed for the City or similar work performed for others;
- e. Team member availability to provide the requested services;
- f. Approach to delivering the requested services;
- g. Ability to work effectively with City staff, other public agencies and related parties as directed during the course of the design, study or other services;
- h. Pertinent new ideas which may be presented during the course of the selection process.
- i. Availability, experience and knowledge of any subconsultants, if used, to provide the requested services; and
- j. Overall quality of response to the RFP.

Standard Agreement and Insurance Coverage

The selected Consultant will be required to enter into an agreement based on the City's Standard Professional Services Agreement (refer to Attachment #1). Prior to commencement of any project activities, the Consultant must secure worker's compensation insurance and comprehensive general liability insurance, including auto and contractual liability coverage, as noted in the Standard Professional Services Agreement.

Business License Requirement

All Consultants doing business with the City of Sonoma must have a current, valid business license issued by the City. If the selected Consultant does not have a current business license, the Consultant will be required to obtain one prior to contract award. The cost of obtaining a business license with the City is considered a pre-contractual expense as discussed in this RFP. Business license information may be obtained on the City's website at <https://www.sonomacity.org>.

Non-Discrimination

Consultant agrees that in carrying out its responsibilities under this agreement, and in particular with regard to the employment of persons and sub-Consultants working on the project, it will not discriminate on the basis of race, color, creed, national origin, religion, sex, age, or handicap. In the event any of the work performed by Consultant hereunder is sub-contracted to another person or firm (with approval of the City as required herein), sub-contract shall contain a similar provision.

Public Records Act

Pursuant to the California Public Records Act (Cal. Government Code section 6250 et seq.), all responses to this RFP will become public records after either the City of Sonoma and Proposer have completed negotiations and entered into the Agreement or the City has rejected all proposals. All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act. Furthermore, the City of Sonoma will have no liability to the proposer or any other party as a result of any public disclosure of any proposal or the Agreement.

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 Consultant 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 Consultants 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 Consultants seeking to shield a portion of their proposal from public disclosure.

B. PROPOSAL FORMAT AND CONTENT

The proposal shall not exceed fifty (50) 8 ½" x 11" pages in no less than 11-point font. This page limit does not include the cover, tabs and cover letter. Charts and schedules may be included in 11" x 17" format and will be considered as a count of one page. The proposal should not include any elaborate or unnecessary promotional material. The following order and content of proposal sections should be adhered to by each Consultant.

Cover Letter

Provide a brief cover letter, not to exceed two pages, with the following content:

- a. Brief statement of the Consultant's understanding of the project, and summary of key elements of the proposal.
- b. Brief summary of the Consultant's key qualifications and ability to provide the requested products and services.
- c. Statement confirming that the Consultant has the availability and time to dedicate the personnel and resources necessary to provide the requested on-call services.
- d. List all proposed subconsultants and the work each will perform.
- e. The address and telephone number of the Consultant's office from which services will be provided and contact information for the person who will serve as the Consultant's primary contact for this engagement.
- f. Statement that the proposal is valid for 90 calendar days from the date of submission.
- g. Signature by an individual authorized to bind the Consultant.

Company Profile

Provide a brief description of the firm, including business structure, address, the total number of employees, overall industry experience, certifications, affiliations, and relevant experience. Support your capacity to perform the services requested in this RFP.

Project Organization and Staffing

Describe who will manage and work on this project. Identify the Project Manager who will be the key contact with the City of Sonoma. Describe the responsibilities of each person on the project team. Provide brief descriptions of the qualifications of key personnel including their responsibilities on this project and experience on other similar projects. Include resumes for key team members.

Qualifications

Provide an outline of the organization qualifications indicating relevant background experience and capabilities for this work. Give examples of work accomplished that is similar in size and content to the Scope of Services.

Project Approach

Describe your understanding of the City, the work to be done, and the objectives to be accomplished.

- Describe your approach and work plan for providing the requested services.
- Outline the activities/tasks that will be undertaken to meet the project objectives and requested services.
- Provide an overall anticipated project schedule with key tasks and milestones.
- Identify methods that will be used to ensure quality control as well as budget and schedule control.
- Identify any special issues or problems that are likely to be encountered during the project and how they will be addressed.
- Identify assumptions such as support or activities that is expected of the City of Sonoma.
- Indicate the CEQA document type that is anticipated to be certified.

Client References

Provide at least three (3) but not more than five (5) client references for similar services provided within the past five (5) years. For each reference, provide: a) client organization name and address; b) client contact name, title, phone number and email address; c) a brief description of the services provided and timeframe that services were provided; e) names of the Consultant's team members who worked on the reference engagements, as well as their respective responsibilities.

Cost Proposal

Prospective Consultants shall submit a Cost Proposal in a **separate, sealed envelope**; it shall **not** be included under the same cover as the Consultant's proposal. The sealed envelope shall be clearly marked with: a) Consultant's name; b) "Cost Proposal for Citywide Safety Bicycle and Pedestrian Improvements Project No. T-6"; and c) Proposal Due Date.

The Cost Proposal shall include a table/spreadsheet which shows the dollar cost per task for each staff project personnel proposed for the project. The format shall indicate the total dollar cost for each task (row total) and the total dollar cost for each staff project personnel (column total), and the total not-to-exceed fee for the project. The spreadsheet shall also include, in a similar format, lump sum costs for proposed subconsultant work (if any).

Fees paid to consultant will be on a time and materials basis as justified by "percent of work completed" up to the negotiated maximum amount per signed contract. Any extra work deemed necessary by the Consultant must be pre-approved and authorized by the City in writing. No payment will be made for any unauthorized work performed by the Consultant or any sub-consultants.

Statement of Compliance

Consultants must submit a Statement of Compliance with all parts of the Request for Proposal and the City's Standard Professional Services Agreement (refer to Attachment #1) terms and conditions. The Statement of Compliance must declare either:

- a. This proposal is in strict compliance with the Request for Proposal and the City's Standard Professional Services Agreement and no exceptions to either are proposed; or
- b. This proposal is in strict compliance with the Request for Proposal and the City's Standard Professional Services Agreement except for the items listed. For each exception and/or suggested change, the Consultant **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.

Conflict of Interest

Consultants shall disclose to the City any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required. At the City's discretion, a potential conflict of interest, to the extent it is waivable, may be waived or factored into the final award decisions and/or a modified Scope of Work.

Other Information

Include any other information you consider to be relevant to the proposal. However, choose the additional information carefully, because this section of the proposal should not constitute the bulk of your submission.

ATTACHMENT 1
STANDARD 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. 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: _____

It takes two signatures to bind a corporation to a contract: (1) either the chairperson, president, or any vice president; and (3) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer. (Civ. Code § 313.) If a contractor does not wish to provide two signatures, the City can accept one signature along with a resolution of the corporation’s board of directors authorizing the person who signed the contract to bind the corporation to contracts.

**“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 _____