



REQUEST FOR PROPOSALS (RFP) 19-69

TITLE, ESCROW AND RELATED SERVICES

Date Issued

October 24, 2019

Submittal Due Date

November 21, 2019 @ 2:00 pm PST

To

Celeste Carranza, Associate Real Property Agent

69 Stony Circle

Santa Rosa, CA 95401

707-543-4520

ccarranza@srcity.org

CITY OF SANTA ROSA
TITLE, ESCROW AND RELATED SERVICES

Request for Proposals

The City of Santa Rosa (City) is pleased to invite you to respond to a Request for Proposals (RFP) for Title, Escrow and Related Services.

A. *Introduction/Purpose:* The City of Santa Rosa Real Estate Services Office is seeking qualified professional Title companies who are willing and able to provide title, escrow and related services on an “as needed” basis.

1. Project Background and Description: The City is seeking submittals from qualified Proposers interested in providing full service professional title, escrow and related services City wide. Award(s) will be made to the most qualified firm(s) as determined by an evaluation committee. Firm(s) chosen through this RFP process will enter into a Professional Services Agreement with the City for up to 3 years (Attachment 1 example). Proposer(s) will be contacted directly by the City Real Estate Services Office, on an as needed basis for miscellaneous Title, escrow and related services.

2. Desired Goals/Objectives/Outcomes

Goals - City is seeking responses from Consultants to perform title, escrow and related services that may include but are not limited to sales and acquisitions transactions including right of way, escrow services for purchase and lending transactions, issuance of title insurance policies, issuance of new and/or updates to existing title guarantees and preliminary title reports (providing hyperlinked copies of all underlying exception and exclusion documents, the most recent vesting deed(s), mapped easement and plat maps), with and without eventual purchase of a policy, title searches or chain of title.

B. *Statement of Requirements - Services Required of Successful Proposer(s)*

Firm(s) will be selected for use on projects based on the match between specific credentials and project requirements. .

C. *Schedule*

The following schedule is subject to change. Except as provided below, changes will only be made by written amendment to this solicitation, which amendment shall be issued to all parties via the City’s electronic bidding platform, PlanetBids.

Date	Event
<u>October 24, 2019</u>	Release Request for Proposals
<u>November 1, 2019</u>	Questions Due by 5:00 p.m. PST
<u>November 7, 2019</u>	City's Responses to Questions Due
<u>November 21, 2019</u>	Submittals Due by 2:00 p.m. PST
<u>TBD</u>	Submittals Evaluated by City
<u>TBD</u>	Notice of Intent to Award <i>(subject to delay without notice to Proposers)</i>

D. Questions

Proposers will be required to submit any and all questions within the Q & A feature of the City's electronic bidding platform, Planet Bids in order for staff to prepare written responses to all Proposers. Please note: you may submit an attachment on the Q & A with ALL your questions contained within a single submission. Written answers will be shared with all potential bidders through the Q & A feature on Planet Bids. Responses to questions are informal and do not change the structure or content of the RFP. Only communication issued as formal Addenda to the RFP through the portal are binding.

E. Corrections and Addenda

1. If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer shall immediately notify the contact person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFP.

2. If a Proposer fails to notify the contact person prior to the date fixed for submission of Submittals of a known error in the RFP, or an error that reasonably should have been known, the Proposer shall submit a Submittal at their own risk, and if the Proposer is awarded a contract they shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.

3. Addenda issued by the City interpreting or changing any of the items in this RFP, including all modifications thereof, shall be incorporated in the Submittal. The Proposer shall submit the signed addenda with the Submittal. Any oral communication by the

City's designated contact person or any other City staff member concerning this RFP is not binding on the City and shall in no way modify this RFP or any obligations arising hereunder.

G. Submittal

1. **Form:** In order to be deemed responsive, Proposers must submit one (1) signed original Submittal, four (4) copies of the signed Submittal, and one (1) electronic copy on a USB Flash drive of the Submittal in its entirety before the submittal date as stated on the first page of this RFP or as revised by official Addendum. Submittals must be enclosed in a sealed envelope or package and clearly marked and submitted to:

“TITLE, ESCROW AND RELATED SERVICES, RFP 19-69”

Submittal should be addressed to:

Celeste Carranza, Associate Real Property Agent
69 Stony Circle
Santa Rosa, Ca 95401

2. **Due Date:** Submittals must be received no later than November 21, 2019, at 2:00pm PST, the date and time listed on the first page and in the schedule of the RFP, or as revised by Addendum. The Submittal due date is subject to change. If the Submittal due date is changed, all known recipients of the original RFP will be notified of the new date through Addendum via PlanetBids.
3. **General Instructions:** To receive consideration, submittals shall be made in accordance with the following general instructions:
 - a. The completed submittal shall be without alterations or erasures.
 - b. No oral or telephonic submittals will be considered.
 - c. The submission of a proposal shall be an indication that the Proposer has investigated and satisfied him/herself as to the conditions to be encountered, the character, quality and scope of the work to be performed, and the requirements of the City, including all terms and conditions contained within this RFP.

Submittal Format and Contents: For ease of review and to facilitate evaluation, the submittals for this project shall be organized and presented in the order requested as follows:

a) Section I - Organizational Information:

Provide specific information concerning the firm in this section, including the legal name, address and telephone number of your company and the type of entity (sole proprietorship, partnership, or corporation and whether public or private). Include the name and telephone number of the person(s) in your company authorized to execute the proposed contract. If two or more firms are involved in a joint venture or association, the submittal must clearly delineate the respective areas of authority and responsibility of each party.

b) Section II - Qualifications and Experience:

Demonstrate ability to effectively provide title escrow, and related services. Include years of experience, size of firm, capabilities of firm, market coverage, experience with government entities, and examples of transactions completed.

Provide specific information in this section concerning the firm's experience in the services specified in this RFP, preferably within the State of California. Examples of completed transactions, as current as possible, may be submitted, as appropriate.

Debarment or Other Disqualification

Proposer must disclose any debarment or other disqualification as a supplier or vendor for any federal, state or local entities. Proposer must describe the nature of the debarment/disqualification, including where and how to find such detailed information.

c) Section III – Identification of subcontractors:

Proposers shall identify all subcontractors they intend to use for the proposed scope of work. For each subcontractor listed, Proposers shall indicate (1) what products and/or services are to be supplied by that subcontractor, (2) what percentage of the overall scope of work that subcontractor will perform and (3) if the Proposer and subcontractor have collaborated on past projects; what projects and for whom.

d) Section IV - Insurance:

The Selected Proposer(s) will be required to submit and comply with all insurance as described in the attached Sample Insurance Requirements (Attachment B). In this Section, please indicate your review and agreement to provide the insurance per City of Santa Rosa requirements. Securing this insurance is a condition of award for this contract.

e) Section V - Additional Information:

Include any other information you believe to be pertinent but not required.

f) Section VI – Contract Terms:

Proposers must include a statement acknowledging their willingness to accept the sample contract terms (Attachment A) or identify specific exceptions to the sample agreement. If Proposer intends to request changes to the sample contract, a redline and alternative language for the proposed changes must be included within this Section

- Each proposal shall include the following elements entitled **Exhibit A**. Limit the Proposal to 30 pages (15 pages front and back) including resumes:
 1. Cover Letter – A letter signed by a principal or authorized representative who can make legally binding commitments for the entity.
 2. Project work scope and services required as expressed per the objectives above.
 3. Staff that would provide services to the City and their qualifications.
 4. Staff member who would be the City’s account manager and their resume.
 5. A statement concerning the ability of the firm to meet required time schedules (when known)
 6. Previous experience
 7. Extent of subcontracting of work
 8. References, preferably from other government agencies, include contact person names and phone numbers, previous projects and present relationship with City (if applicable)

- A separate section, entitled **Exhibit B**, should express a clear breakdown of all pricing. Pricing **MUST** be broken down to deliver a clear understanding of costs per item or hourly rates if applicable.

H. Selection Process

1. All submittals received by the specified deadline will be reviewed by the City for content, including but not limited to fee, related experience and professional qualifications of the Proposers.

City employees will not participate in the selection process when those employees have a relationship with a person or business entity submitting a submittal which would subject those employees to the prohibition of Section 87100 of the Government Code. Any person or business entity submitting a submittal who has such a relationship with a City employee who may be involved in the selection process shall advise the City of the name of the City employee in the submittal.

Submittals may be evaluated using the following criteria (note that there is no value or ranking implied in the order of this list):

- a. Demonstrated ability to perform the services described;
- b. Experience, qualifications and expertise;
- c. Quality of work as verified by references;
- d. A demonstrated history of providing similar services to comparable entities;
- e. Willingness to accept the City's contract terms and insurance provisions; and
- f. Any other factors the evaluation committee deems relevant. (When such criteria are used for evaluation purposes, the basis for scoring will be clearly documented and will become part of the public record.).

The Assistant City Manager in consultation with the Purchasing Agent reserve the right, in their sole discretion, to take any of the following actions at any time before Council approval of an award: waive informalities or minor irregularities in any submittals received, reject any and all submittals, cancel the RFP, or modify and re-issue the RFP. Failure to furnish all information requested or to follow the format requested herein may disqualify the Proposer, in the sole discretion of the City. False, incomplete, misleading or unresponsive statements in a submittal may also be sufficient cause for a submittal's rejection.

The City may, during the evaluation process, request from any Proposer additional information which the City deems necessary to determine the Proposer's ability to perform the required services. If such information is requested, the Proposer will be notified via email and shall be permitted three (3) business days to submit the information requested.

An error in the submittal may cause the rejection of that submittal; however, the City may, in its sole discretion, retain the submittal and allow certain corrections. In determining if a correction will be made, the City will consider the conformance of the submittal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP. If the Proposer's intent is clearly established based on review of the complete submittal, the City may, at its sole option, correct an error based on that established content. The City may also correct obvious clerical errors. The City may also request clarification from a Proposer on any item in a submittal that City believes to be in error.

The City reserves the right to select the submittal(s) which in its sole judgment best meets the needs of the City and to award to only one or multiple qualified submittals. ***The lowest proposed cost is not the sole criteria for recommending contract award.*** The City also makes no guarantee of any or equal amounts of work.

All firms responding to this solicitation will be notified of their selection or non-selection after the evaluation committee has completed the selection process.

Generally, the firm selected by the Evaluation Committee will be recommended to the City Council for this project, but the Council is not bound to accept the recommendation or award the project to the recommended firm.

I. Finalist Interviews

After initial screening, the evaluation committee may select those firms deemed most qualified for this project for further evaluation. Interviews of these selected firms may be conducted as part of the final selection process. Interviews may or may not have their own separate scoring during the evaluation process.

J. General Information

1. Rules and Regulations

- a. The issuance of this solicitation does not constitute an award commitment on the part of the City, and the City shall not pay for costs incurred in the preparation or submission of submittals. All costs and expenses associated with the preparation of this submittal shall be borne by the Proposer.
- b. The City reserves the right to reject any or all submittals or portions thereof if the City determines that it is in the best interest of the City to do so.
- c. The City may waive any deviation in a submittal. The City's waiver of a deviation shall in no way modify the RFP requirements nor excuse the successful Proposer from full compliance with any resultant agreement requirements or obligations. The City reserves the right to reject any or all submittals, or to waive any defect or irregularity in a submittal. The City further reserves the right to award the agreement to the Proposer or Proposers that, in the City's judgment, best serves the needs of the City.
- d. All Proposers submit their submittals to the City with the understanding that the recommended selection of the review committee is final and subject only to review and final approval by the Department Director (via delegation), the City Purchasing Agent or the City Council.
- e. Upon submission, all submittals shall be treated as confidential documents until the selection process is completed. Once the notice of intent to award is issued by the City, all submittals shall be deemed public record. In the event that a Proposer desires to claim portions of its submittal exempt from disclosure, it is incumbent upon the Proposer to clearly identify those portions with the word "Confidential" printed on the top right-hand corner of each page for which such privilege is claimed, and to clearly identify the information claimed confidential by highlighting, underlining, or bracketing it, etc. Examples of confidential materials include trade secrets. Each page shall be clearly marked and readily separable from the submittal in order to facilitate public inspection of the non-confidential portion of the submittal. The City will consider a proposer's request

for exemptions from disclosure; however, the City will make its decision based upon applicable laws. An assertion by a Proposer that the entire submittal, large portions of the submittal, or a significant element of the submittal, are exempt from disclosure will not be honored and the submittal may be rejected as non-responsive. Prices, makes and models or catalog numbers of the items offered, deliverables, and terms of payment shall be publicly available regardless of any designation to the contrary.

- f. The City will endeavor to restrict distribution of material designated as confidential to only those individuals involved in the review and analysis of the submittals. Proposers are cautioned that materials designated as confidential may nevertheless be subject to disclosure. Proposers are advised that the City does not wish to receive confidential or proprietary information and those Proposers are not to supply such information except when it is absolutely necessary. If any information or materials in any submittal submitted are labeled confidential or proprietary, the submittal shall include the following clause:

- f.1 [Legal name of Proposer] shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including attorneys' fees awarded under the California Public Records Act (Government Code §6250 et seq.) Arising out of, concerning or in any way involving any materials or information in this submittal that [legal name of Proposer] has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.

2. Nonliability of City

The City shall not be liable for any precontractual expenses incurred by the Proposer or selected contractor or contractors. The City shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

3. Submittal Alternatives

Proposers may not take exception or make material alterations to any requirement of the RFP. Alternatives to the RFP may be submitted as separate submittals and so noted on the cover of the submittal. The City reserves the right to consider such alternative submittals, and to award an agreement based thereon if it is determined to be in the City's best interest and such submittal satisfies all minimum qualifications specified in

the RFP. Please indicate clearly in the submittal that the submittal offers an alternative to the RFP.

4. Lobbying

Any party submitting a submittal or a party representing a Proposer shall not influence or attempt to influence any member of the selection committee, any member of the City Council, or any employee of the City, with regard to the acceptance of a submittal. Any party attempting to influence the RFP process through ex-parte contact may be subject to rejection of their submittal.

5. Form of Agreement

- a. No agreement with the City shall have any effect until a contract has been signed by both parties.
- b. A sample of the agreement is included as Attachment A hereto. Proposers must be willing to provide the required insurance and accept the terms of this sample agreement. With few exceptions, the terms of the City's standard agreement will not be negotiated. *Indemnification language will not be negotiated.*
- c. Submittals submitted shall include a statement that (i) the Proposer has reviewed the sample agreement and will agree to the terms contained therein if selected, or (ii) all terms and conditions are acceptable to the Proposer except as noted specifically in the submittal. A Proposer taking exception to the City's sample agreement must also provide alternative language for those provisions considered objectionable to the Proposer. Please note that any exceptions or changes requested to the Agreement may constitute grounds to reject the submittal.
- d. Failure to address exceptions to the sample agreement in Proposer's submittal will be construed as acceptance of all terms and conditions contained therein.
- e. Submission of additional contract exceptions after the submittal submission deadline may result in rejection of the Proposer's submittal.

6. Duration of Submittal; Cancellation of Awards; Time of the Essence

- a. All submittals will remain in effect and shall be legally binding for at least ninety (90) days.
- b. Unless otherwise authorized by City, the selected Proposer will be required to execute an agreement with the City for the services requested within sixty (60) days of the City's notice of intent to award. If agreement on terms and conditions acceptable to the City cannot be achieved within that timeframe, or if, after reasonable attempts to negotiate such terms and conditions, it appears that an agreement will not be possible, as determined at the sole discretion of

the City, the City reserves the right to retract any notice of intent to award and proceed with awards to other Proposer, or not award at all.

7. Withdrawal and Submission of Modified Submittal

- a. A Proposer may withdraw a submittal at any time prior to the submission deadline by submitting a written notification of withdrawal signed by the Proposer or his/her authorized agent. Another submittal may be submitted prior to the deadline. A submittal may not be changed after the designated deadline for submission of submittals.

K. Protest Process

Proposers may file a “protest” to an RFP with the City’s Purchasing Department via email to Purchasing Agent Brandalyn Tramel, btramel@srcity.org For a protest to be considered valid, the protest must:

1. Be filed in writing within five (5) business days of the RFP issue date. A second protest period is allowed for the issuance of the Agreement. Protests for this period must be received in writing on or before 5:00 p.m. of the third business day following the posting of Bid Results/Notice of Intent to Award;
 2. Clearly identify the specific irregularity or accusation;
 3. Clearly identify the specific City staff determination or recommendation being protested;
 4. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
 5. Include all relevant, supporting documentation with the protest at time of filing.
- If the protest does not comply with each of these requirements, it will be rejected as invalid. If the protest is valid, the City’s Purchasing Agent shall review the basis of the protest and all relevant information. The Purchasing Agent will provide a written decision to the protestor within ten (10) business days from receipt of protest. The decision from the Purchasing Agent, or his/her designee, is final and no further appeals will be considered.

Attachments:

Attachment A: Sample Agreement

Attachment B: Sample Insurance Requirements

**CITY OF SANTA ROSA
PROFESSIONAL SERVICES AGREEMENT
WITH [NAME OF CONSULTANT]
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2019 [leave date blank until all parties have signed or until Council approves], by and between the City of Santa Rosa, a municipal corporation ("City"), and [add consultant's full name, for example, "XYZ Sales Corporation" or "ABC Consulting, LLC" or "ABC Enterprises, LP" or "John Smith, dba Smith Consulting"], a [add type of legal entity and state of entity formation or incorporation, for example, a "California Corporation" or a "Delaware Limited Liability Company" or a "Nevada Limited Partnership" or a "sole proprietor"] ("Consultant").

RECITALS

- A. City desires to [enter brief description of the task or project that is intended to be completed through this Agreement].
- B. City desires to retain a qualified firm to conduct the services described above in accordance with the Scope of Services as more particularly set forth in Exhibit A to the Agreement.
- C. Consultant represents to City that it is a firm composed of highly trained professionals and is fully qualified to conduct the services described above and render advice to City in connection with said services.
- D. The parties have negotiated upon the terms pursuant to which Consultant will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Consultant agree as follows:

1. SCOPE OF SERVICES

Consultant shall provide to City the services described in Exhibit A ("Scope of Services") [attach either City's description of the services to be provided or Consultant's proposal and mark as Exhibit A]. Consultant shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by Consultant and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Consultant and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

2. COMPENSATION

a. City shall pay Consultant for services rendered pursuant to this Agreement at the rates, times and in the manner set forth in Exhibit B. Consultant shall submit monthly statements to City which shall itemize the services performed as of the date of the statement and set forth a progress report, including work accomplished during the period, percent of each task completed, and planned effort for the next period. Invoices shall identify personnel who have worked on the services provided, the number of hours each worked during the period covered by the invoice, the hourly rate for each person, and the percent of the total project completed, consistent with the rates and amounts shown in Exhibit B.

b. The payments prescribed herein shall constitute all compensation to Consultant for all costs of services, including, but not limited to, direct costs of labor of employees engaged by Consultant, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses and charges of Consultant, its agents and employees. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

c. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of [enter maximum amount in written and numeric form, for example – "ten-thousand, five-hundred dollars and no cents (\$10,500.00)"]. The City's Chief Financial Officer is authorized to pay all proper claims from Charge Number [enter IFAS charge number].

3. DOCUMENTATION; RETENTION OF MATERIALS

a. Consultant shall maintain adequate documentation to substantiate all charges as required under Section 2 of this Agreement.

b. Consultant shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate and shall make such documents and records available to authorized representatives of City for inspection at any reasonable time.

c. Consultant shall maintain the records and any other records related to the performance of this Agreement and shall allow City access to such records during the performance of this Agreement and for a period of four (4) years after completion of all services hereunder.

4. INDEMNITY

a. Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents, in said performance

of professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of City.

b. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 4, nor shall the limits of such insurance limit the liability of Consultant hereunder. This Section 4 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 17(b), below. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

5. INSURANCE

a. Consultant shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Consultant in exchange for City's agreement to make the payments prescribed hereunder. Failure by Consultant to (i) maintain or renew coverage, (ii) provide City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by City as a material breach of this Agreement by Consultant, whereupon City shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Consultant to maintain required insurance coverage shall not excuse or alleviate Consultant from any of its other duties or obligations under this Agreement. In the event Consultant, with approval of City pursuant to Section 6 below, retains or utilizes any subcontractors or subconsultants in the provision of any services to City under this Agreement, Consultant shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverages set forth in the Insurance Requirements in Attachment One.

b. Consultant agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. Consultant agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

6. ASSIGNMENT

Consultant shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of City, in City's sole and absolute discretion. Consultant agrees that the City shall have the right to approve any and all subcontractors and subconsultants to be used by Consultant in the performance of this Agreement before Consultant contracts with or otherwise engages any such subcontractors or subconsultants.

7. NOTICES

Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

City Representative:

Consultant Representative:

[Include name of Project Manager]
[Include Address and Telephone and
Facsimile Number]

[Include name of Project
Manager]
[Include Address, Telephone and
Facsimile Number]

8. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Consultant nor Consultant's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement, and Consultant shall be issued a Form 1099 for its services hereunder. As an independent contractor, Consultant hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Consultant's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Consultant, in the performance of Consultant's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Consultant for accomplishing such results. To the extent that Consultant obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Consultant's sole discretion based on the Consultant's determination that such use will promote Consultant's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Consultant use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Consultant. It is further understood and agreed that Consultant shall issue W-2 or 1099 Forms for income and employment tax purposes, for

all of Consultant's assigned personnel and subcontractors.

d. The provisions of this Section 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Consultant. Consultant may represent, perform services for, or be employed by such additional persons or companies as Consultant sees fit.

9. ADDITIONAL SERVICES

Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid on an hourly basis at the rates set forth in Exhibit B, or paid as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

10. SUCCESSORS AND ASSIGNS

City and Consultant each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

11. TERM, SUSPENSION, TERMINATION

a. This Agreement shall become effective on the date that it is made, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

b. City shall have the right at any time to temporarily suspend Consultant's performance hereunder, in whole or in part, by giving a written notice of suspension to Consultant. If City gives such notice of suspension, Consultant shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Consultant. Upon such termination, Consultant shall submit to City an itemized statement of services performed as of the date of termination in accordance with Section 2 of this Agreement. These services may include both completed work and work in progress at the time of termination. City shall pay Consultant for any services for which compensation is owed; provided, however, City shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the services required by this Agreement. Consultant shall promptly deliver to City all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of City without additional compensation to Consultant.

12. TIME OF PERFORMANCE

The services described herein shall be provided during the period, or in accordance with the schedule, set forth in Exhibit A. Consultant shall complete all the required services and tasks and complete and tender all deliverables to the reasonable satisfaction of City, not later than [enter expected

completion date].

13. STANDARD OF PERFORMANCE

Consultant shall perform all services performed under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Consultant's profession in California. All products of whatsoever nature that Consultant delivers to City shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Consultant's profession, and shall be provided in accordance with any schedule of performance. Consultant shall assign only competent personnel to perform services under this Agreement. Consultant shall notify City in writing of any changes in Consultant's staff assigned to perform the services under this Agreement prior to any such performance. In the event that City, at any time, desires the removal of any person assigned by Consultant to perform services under this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Consultant shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

14. CONFLICTS OF INTEREST

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of City. Consultant agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City at all times during the performance of this Agreement.

15. CONFLICT OF INTEREST REQUIREMENTS

a. **Generally.** The City's Conflict of Interest Code requires that individuals who qualify as "consultants" under the Political Reform Act, California Government Code sections 87200 *et seq.*, comply with the conflict of interest provisions of the Political Reform Act and the City's Conflict of Interest Code, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests. The term "consultant" generally includes individuals who make governmental decisions or who serve in a staff capacity.

b. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code:

yes no (*check one*)

If "yes" is checked by the City, Consultant shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants"; and
- (2) Cause these individuals to file with the City Clerk the assuming office statements of economic interests required by the City's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, Consultant shall cause these individuals to file with the City Clerk annual statements of economic interests, and "leaving office" statements of economic interests, as required by the City's Conflict of Interest Code.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act. The City may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

16. CONFIDENTIALITY OF CITY INFORMATION

During performance of this Agreement, Consultant may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City. Consultant agrees to protect all City Information and treat it as strictly confidential, and further agrees that Consultant shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. In addition, Consultant shall comply with all City policies governing the use of the City network and technology systems. A violation by Consultant of this Section 16 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

17. CONSULTANT INFORMATION

a. City shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Consultant pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Consultant shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.

b. Consultant shall fully defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Consultant pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Consultant not

later than ten (10) days after City is served with any such claim, action, lawsuit or other proceeding, provided that City's failure to provide such notice within such time period shall not relieve Consultant of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

c. All proprietary and other information received from Consultant by City, whether received in connection with Consultant's proposal, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to Consultant of any request for the disclosure of such information. Consultant shall then have five (5) days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorneys' fees) incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. Consultant shall have sole responsibility for defense of the actual "trade secret" designation of such information.

d. The parties understand and agree that any failure by Consultant to respond to the notice provided by City and/or to enter into an agreement with City, in accordance with the provisions of subsection c, above, shall constitute a complete waiver by Consultant of any rights regarding the information designated "trade secret" by Consultant, and such information shall be disclosed by City pursuant to applicable procedures required by the Public Records Act.

18. MISCELLANEOUS

a. Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

b. Modification. No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.

c. Compliance with Laws. Consultant shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, et seq., which require prevailing wages (in accordance with DIR determinations at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code sections 1720 et seq. Consultant shall pay to the City when due all business taxes payable by Consultant under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Consultant.

d. Discrimination Prohibited. With respect to the provision of services under this Agreement, Consultant agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

e. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

f. Waiver of Rights. Neither City acceptance of, or payment for, any service or performed by Consultant, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

g. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

19. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Consultant hereby represents and warrants to City that it is (a) a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Consultant hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Consultant in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONSULTANT:

Name of Firm: _____

CITY OF SANTA ROSA
a Municipal Corporation

TYPE OF BUSINESS ENTITY (check one):

- _____ Individual/Sole Proprietor
- _____ Partnership
- _____ Corporation
- _____ Limited Liability Company

By: _____

Print
Name: _____

Title: _____

_____ Other (please specify: _____)

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

ATTEST:

Title: _____

By: _____

City Clerk

Print Name: _____

[Remove signature block if agreement not approved by Council]

Title: _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One - Insurance Requirements

Exhibit A - Scope of Services

Exhibit B - Compensation

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
PROFESSIONAL SERVICES AGREEMENTS**

A. Insurance Policies: Consultant shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 1 million aggregate	Consultant shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. 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.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Consultant's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Consultant shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Consultant or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Consultant may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.