



October 30, 2014

REQUEST FOR PROPOSALS - TO PROVIDE LANDSCAPE DESIGN SERVICES FOR THE CITY HALL PLAZA DEMONSTRATION GARDEN AND LOW IMPACT DEVELOPMENT (LID) RETROFIT PROJECT FOR THE CITY OF SANTA ROSA UTILITIES DEPARTMENT

Dear Landscape Architect,

The City of Santa Rosa's Utilities Department (City) is soliciting Request for Proposals (Proposals) from licensed landscape architect firms interested in and capable of providing design services under a Professional Services Agreement (PSA) to create a demonstration garden at the Santa Rosa City Hall plaza. The successful candidate will be a key member of the City's design and management team on this high profile project, provide landscape design services; and lead specific aspects of the project.

The Proposals will be screened by the City's Review Panel. Landscape architect firms most qualified may be invited to interview with the Review Panel or a firm may be selected on the basis of the Proposals only. For your information, a sample of the proposed PSA is attached to this document as Exhibit "B". Please review the City's insurance requirements specified in the sample PSA.

BACKGROUND

The City of Santa Rosa has been selected to receive Proposition 40 and Proposition 84 Storm Water Grant Program funding for this project. The project, "City Hall Plaza Demonstration Garden and Low Impact Development (LID) Retrofit" will convert approximately 34,000 square feet of existing lawn and ivy landscape areas into a drought tolerant, low water-use landscape and create several Low Impact development (LID) features. These LID features will include vegetated swales and the addition of bioretention in the main parking lot to infiltrate and treat storm water runoff. High-efficiency irrigation technology and a rainwater harvesting demonstration system will be installed. This project will also include the creation of a public gathering area and permeable hardscape; signage and kiosks, and a web-based educational interface. Due to the public location of this project, a Stakeholder Involvement Plan will be developed to include various stakeholder groups through the design process.

As the largest California city north of San Francisco, Santa Rosa is uniquely positioned to demonstrate and promote pivotal change throughout the North Coast Region. The project will exemplify the type of beautiful, drought resistant, regionally appropriate landscape encouraged in Santa Rosa and beyond. The completed project will also provide storm water quality benefits that protect our local waterways. The project will demonstrate successful implementation of the

Utilities Department
69 Stony Circle • Santa Rosa, CA 95401
Phone: (707) 543-4200 • Fax: (707) 543-3936
www.srcity.org

Storm Water Low Impact Development Technical Design Manual (LID Manual), which is required to be implemented by new development and redevelopment projects to meet the City's NPDES MS4 Storm Water Permit requirements. The project will also demonstrate required compliance with the City's Water Efficient Landscape Ordinance, which exceeds the State's ordinance requirements.

The City of Santa Rosa, which is located in Russian River Watershed, participated in the creation of the Russian River-Friendly Landscape Guidelines. Russian River-Friendly landscaping is a holistic approach that works in harmony with natural conditions by using sustainable landscape practices. This project will demonstrate the type of practices and principles as outlined in the Russian River-Friendly Landscape Guidelines.

The goals of the project are to: provide substantial water quality benefits, reduce the amount of landscape water need and demonstrate elements of Russian River-Friendly Landscaping Guidelines and Storm Water Low Impact Design requirements.

Preliminary design has been completed by City staff as part of the grant application process. The completion of civil plans as well as the assemblage of the final plan set and associated documents will be completed by the City's project management and design team. Project management and oversight will be performed by the City. The City will obtain all necessary permits and provide construction inspection.

Formal Design Review with the City's Design Review Board is anticipated to occur in spring, 2015. Construction shall begin in April, 2016 and completed prior to November, 2016.

QUALIFICATIONS

The City seeks a landscape architect with the knowledge and experience including but not limited to the following areas:

1. Sustainable Landscaping Practices and Principles: Technical understanding and in-the-ground built examples of projects designed and built using sustainable landscape practices and principles consistent with the Bay-Friendly/Russian-River Friendly Landscape Guidelines, or equivalent;
2. Designing Public Spaces: Experience designing public spaces such as parks, demonstration gardens, landmark locations, or equivalent;
3. Educational Signage: Experience designing educational interpretive signage for public spaces;
4. Leading Stakeholder Groups: Experience facilitating diverse stakeholder groups through a public landscape design, and/or other public design process. Ability to develop and facilitate a plan for participation and incorporate the feedback provided through renderings, sketches, plan revision, etc. Please include any relevant experience creating and moderating design charrettes, formal design review, and public feedback mechanisms;

5. Irrigation Design: Technical knowledge and experience in designing and specifying high efficiency irrigation systems that meet the City's Water Efficient Landscape Ordinance, or equivalent;
6. Rainwater Harvesting System Design: Technical understanding to design and specify commercial and residential rainwater harvesting systems to meet Rainwater Capture Act of 2012, AB-1750 requirements;
7. Federal/State of California/City of Santa Rosa Ordinance Compliance: Ability to design landscape plans that meet all applicable ordinance and building permit requirements including but not limited to: City of Santa Rosa Water Efficient Landscape Ordinance, Federal Americans with Disabilities Act, California Building Code Standards, CEC lighting code standards, AB1750 and City Design Guidelines;
8. Storm Water Low Impact Development Technical Design Manual (LID Manual): Familiarity with and understanding of storm water low impact development design elements;
9. Construction Project Oversight: Ability to provide site inspection to assure that planted areas and irrigation system are installed in accordance with plans and specifications. Ability to review and approve proposed modifications as needed.

SCOPE OF SERVICES

A proposed Scope of Services for the landscape design services associated with the City Hall Plaza Demonstration Garden and Low Impact Development (LID) Retrofit Project is attached as Exhibit "A".

The City reserves the right to negotiate additional services after reviewing all deliverables as prepared by the selected landscape architect.

RESPONSE FOR REQUEST FOR PROPOSALS

Six (6) hard copies and an adobe PDF version of the Proposal must be submitted no later than 5:00 p.m. on November 20, 2014 to:

City of Santa Rosa Utilities Department
Attn: Deb Lane, Water Resources Analyst
69 Stony Circle, Santa Rosa, CA 95401

Complete and concise Proposals are desired. Extensive and elaborate Proposals are discouraged. Hard copies of all Proposals shall be a maximum of 15 sheets double sided (30 pages total) including all appendices and references except the proposal cover, table of contents, and dividers. The Adobe PDF shall be delivered on a CD, DVD, or flash drive to the above address.

Pertinent documents including the Grant Agreement, grant application materials, project map, regional map, conceptual renderings, 40% completed civil engineering plans, project

schedule/budget, links to the City's Water Efficient Landscape Ordinance and Storm Water Low Impact Technical Design Manual and the Russian River-Friendly Landscape Guidelines may be found at www.srcity.org/cityhalldemogarden

The submittal package shall comply with the requirements set forth herein:

1. **Cover Letter.** The cover letter shall be signed by an official authorized to bind the firm for a period up to 90 days after the proposal is submitted and contains the name, title, email address, and telephone number of the individual to whom correspondence and other contact should be directed.

2. **Proposal.**
 - a. **Introduction.** The Proposal shall contain an introduction and include an overview of your understanding of the services to be provided, the objectives to be achieved, and your approach to accomplishing the objectives. The Proposal shall include a discussion regarding the management approach to communicating with City staff and the project management team, managing budget and schedule, and addressing scope changes.
 - b. **Scope of Services.** The Proposal shall define your approach to provide the services consistent with and incorporate elements outlined in Exhibit "A", Scope of Services.
 - c. **Firm and Personnel.** The Proposal shall identify your firm's capabilities and experience on similar types of projects. A description of the landscape architectural firm, team organizational structure, team member biography/resumes, and any other pertinent information shall be included. Pertinent information regarding any sub-consultants must be provided and be within the page limitation described above. Any previous team member joint-experience should be discussed and the value of the team approach explained. The qualifications shall identify the specific personnel who will work on the project, including the extent of their participation and the individuals' related experience. For key team members (as a minimum lead landscape architect project manager, associate landscape architect, etc.) provide a percentage of time that the individual will be available for the duration of the work.
 - d. **Schedule.** Please provide your proposed schedule for completing the services. Schedules should be realistic with adequate work breakdown and milestones to show an understanding of the project.
 - e. **References.** List three clients who can provide a reference to the quality, timeliness, and client service. Include the name, title, organization, mailing address, email address and telephone number of their principal representative.
 - f. **Proposed Fee.** Fee Proposal shall be based on all tasks and in the format identified in the Scope of Services (Exhibit "A"). Any additional cost items included must be distinguished from those listed in the Scope of Service. Provide a fee table that includes each personnel classification required to provide the scope of services, billing rates, hours, and all reimbursable fees and expenses. The fee table shall

show hours by position and task and corresponding itemized cost summary based on the individuals billing rate. The fee table shall include subtotals of hours and charges attributable for each task and each individual, any reimbursable expenses, and a project grand total. Since the project is anticipated to include more than one calendar year, include any annual escalation rate by individual in the fee table.

3. City Agreement and Insurance Requirements and Applicable Grant Agreement Provisions.

Provide confirmation that your firm understands and accepts the City’s Agreement and insurance requirements (attached as Exhibit “B”). Provide confirmation that your firm understands and accepts the applicable requirements per the terms of City’s Grant Agreement with the State Water Resources Control Board.

CITY’S SELECTION CRITERIA

The following is a partial list of the City’s criteria for the selection of a landscape architect for this project:

- Responsiveness to requirements, terms, and conditions of this Request for Proposal.
- Competence, technical ability, specialized experience, and availability of key project members applicable to the needs of this project. Consideration will be given to the firm’s diversity of relevant projects and breadth of experience.
- Quality of landscape architect’s related work experience and demonstrated supporting references.
- Salary scales commensurate with the quality of personnel required for the services to be provided.
- Demonstrated understanding of City’s interests and goals for this project.
- Degree of consideration given to additional issues and project constraints not already indicated in this Request for Proposal.

SCHEDULE OF SELECTION

The **estimated schedule** for procurement of landscape architect services is as follows:

- Release of RFP: October 30, 2014
- Pre-proposal meeting and project site tour*: November 7, 2014 at 9:00 a.m.
Santa Rosa City Hall: 100 Santa Rosa Ave, Santa Rosa, CA (Room 10), Mayor’s Conference Room
- Proposals Due: November 20, 2014 at 5:00 p.m.
- Landscape architect interviews, if necessary: Week of December 8, 2014
- Notification of selected landscape architect: December 11, 2014

The successful landscape architect will be required to execute the City of Santa Rosa standard form of Professional Services Agreement (example attached as Exhibit "B"). Proposals should include confirmation that your firm understands and accepts all the requirements in that agreement, including but not limited to the requirements regarding insurance, indemnity, and conflict of interest. Particular attention should be given to the indemnity clause in the proposed agreement. This clause is not negotiable and will be included unaltered in the final Agreement.

Please contact Deb Lane at dlane@srcity.org, or at (707) 543-4506, if you have any questions about this Request for Proposals.

Deb Lane

Water Resources Analyst

City of Santa Rosa Utilities Department

Attachments:

Exhibit A – Scope of Services

Exhibit B – Sample Professional Services Agreement

*attendance is optional

Exhibit A

Scope of Services

The selected landscape architect firm will provide full landscape architecture services, including design development, conceptual layout, stakeholder involvement, approval through the City of Santa Rosa Design Review Board, and construction oversight necessary to provide a comprehensive set of approved planting and irrigation plans and specifications and associated construction documents for a competitive bid and subsequent construction of the City Hall Plaza Demonstration Garden and Low Impact Development (LID) Retrofit project.

The completion of civil plans as well as the assemblage of the final plan set and associated documents will be completed by the City's project management and design team. Project management and oversight will be performed by the City. The City will obtain all necessary permits and provide construction inspection.

Services requested at this time from the consultant are anticipated to include:

Task 1 – Design:

Develop conceptual layout, 50%, 90% and final planting and irrigation design plans, specifications, and a cost estimate. The design must meet all ordinance and permit requirements, including but not limited to; the City's Water Efficient Landscape Ordinance; National Pollutant Discharge Elimination System storm water permit; Federal Americans with Disabilities Act; California Building Code Standards; CEC code lighting standards; AB1750; and City Design Guidelines. Design tasks shall include:

1. Selection of plants, including trees for two bioretention areas and two (2) vegetated swales.
2. Selection of plants, including trees, and design for a drought tolerant, low water-use landscape to replace existing turf, ivy areas and trees.
3. Conceptual layout including orientation, location and size of design elements to be coordinated and verified with civil plans and the City's project management and design team. ADA compliance is required in all elements. Design elements will include:
 - a. Pervious concrete pathway from sidewalk to gathering area and from gathering area to rainwater harvesting cistern.
 - b. One pervious concrete central gathering area.
 - c. Wall locations as necessary.
 - d. Tables and seating.
 - e. Fences and or access/safety barricade.
 - f. Rainwater harvesting system with a one thousand five hundred (1,500) gallon capacity to be used for irrigation.
 - g. High efficiency drip irrigation system retrofit to existing system including one weather-based irrigation controller serving the retrofitted planted area within the project.
4. Assist with signage designed by City.
 - a. Provide recommendations on effective sign types, locations, and format.
 - b. Provide technical review of proposed signage design and content.
5. Final design. All design elements listed above in conceptual design will be included in final design plans, specification and cost estimate.

Task 1 Deliverables:

- Draft of conceptual design plans/exhibits
- 50% planting and irrigation plans and specifications completed
- 90% planting and irrigation plans and specifications completed
- 100% planting and irrigation plans and specifications completed
- Advise and comment on proposed signage design and content

Task 1 Meetings:

Kickoff Meeting: Meet with City's project management and design team. One (1) meeting- City of Santa Rosa Utilities offices.

Design Review Meetings: Meet with City's project management and design team to review and discuss conceptual layout and planting and irrigation plans for 50% and 90% and 100% completion. Four to six (4-6) or as you feel necessary- City of Santa Rosa Utility offices and web conference.

Signage Design and Content Meetings: Meet with City's project management team to advise and review signage design and content. Two to three (2-3) or as you feel necessary- City of Santa Rosa Utilities offices and/or web conference.

Site visits: Four (4) on-site visits, or as you feel required – Santa Rosa City Hall.

Conference calls: as many conference calls and web conferencing sessions as necessary.

Task 2 - Approval Process:

Participate in the project approval process include, but not limited to the following:

1. Stakeholder Involvement Plan
 - a. Lead the planning effort, creation and implementation of a Stakeholder Involvement Plan. Landscape architect will design and facilitate a process of stakeholder engagement to assimilate opinions and feedback from stakeholders as much as practicable throughout the design process. This process will result in final landscape plans that incorporate public feedback and meets all building codes, ordinances, and grant requirements.
 - b. Planning and facilitation of a design charrette or other forum that will include attendance from a variety of design professionals. Solutions to each project design element (seating, rainwater harvesting, plants, irrigation system, etc.) will be developed that integrate the aptitudes and interests of the group.
2. Formal Design Review with the City of Santa Rosa Design Review Board (DRB)
 - a. Assist project management team as needed in preparing presentation for Design Review Board hearing(s). Co-present the project plans to the Design Review Board with City's project management team and design team. Note: preliminary hearing may result in approval by the DRB or a second hearing may be required.
 - b. Make design changes as directed by the City's project management and design team.

Task 2 Deliverables:

- Create a written Stakeholder Involvement Plan
- Develop and refine design charrette event (or equivalent)
- Provide visual examples as needed for design charrette (or equivalent)
- Facilitate design charrette (or equivalent)
- Track and gather design charrette (or equivalent) solutions
- Create four to eight (4-8) renderings /drawings or as many as you feel are necessary to assimilate and illustrate the post-charrette (or equivalent) solution options and decision making by the City. Renderings/drawings will be used for a public opinion survey.

- Assist project management team as needed to prepare presentation for Design Review Board hearing(s)
- Co-present the project plans to the Design Review Board with City's project management and design team.

Task 2 Meetings:

Stakeholder Involvement Plan development: One to two (1-2) meetings with City's project management and design team to review and refine proposed Stakeholder Involvement Plan. Office or web/phone conference.

Charrette event (or equivalent) preparation meetings: Three to four (3-4) meetings- City of Santa Rosa Utilities offices or web/phone conference.

Design Charrette: Facilitate design charrette (or equivalent) with support from City's project management and design team. Location in Santa Rosa to be determined.

Design Review Board preparation meeting: One to two (1-2) meetings – Office or web/phone conference.

Design Review Board Hearing(s): Co-present the project plans to the Design Review Board. Preliminary hearing may result in approval or a second hearing may be required. One-two (1-2) hearings. Santa Rosa City Hall.

Task 3 – Construction and Implementation:

Provide site inspection and review during construction, including but not limited to the following:

1. Verify proper field installation of the planting and irrigation plans and specifications.
 - a. Confirm soil preparation
 - b. Confirm irrigation installation
 - c. Confirm plant types
 - d. Confirm plant layout
2. Site inspection and plan review of proposed modifications as needed
 - a. Review and approve change orders on planting and irrigation plans

Task 3 Deliverables:

- Site visits
- Plan review and approval of change orders for as-built planting and irrigation plans

Task 3 Meetings:

Site visits: Two to three (2-3) site visits, or as needed – Santa Rosa City Hall.

Format of Deliverables: All deliverables will be submitted in the format determined and specified in the approved contract.

EXHIBIT B

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

This "Agreement" is made as of this ____ day of _____, 2014 [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").

R E C I T A L S

- 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 nor 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, photostating, 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. 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.

e. 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.

f. 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:

CITY OF SANTA ROSA

a Municipal Corporation

Name of Firm: _____

TYPE OF BUSINESS ENTITY (*check one*):

- _____ Individual/Sole Proprietor
- _____ Partnership
- _____ Corporation
- _____ Limited Liability Company
- _____ Other (please specify: _____)

By: _____

Print Name: _____

Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Print Name: _____

Office of the City Attorney

Title: _____

ATTEST:

By: _____

Print Name: _____

City Clerk

[Remove signature block if agreement not approved by Council]

Title: _____

Taxpayer I.D. No. _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One - Insurance Requirements

Exhibit A - Scope of Services

Exhibit B - Compensation