

AGREEMENT FOR ACCEPTANCE OF BIOSOLIDS AND LAND APPLICATION AND OWNER CONSENT

Agreement No. FD01428

Jacobsen
Farm

This Agreement for Acceptance of Biosolids and Land Application ("Agreement") dated 6/16, 2017 is between the City of Santa Rosa, a municipal corporation ("CITY"), and Gilardi & Jacobsen Ag Services, Inc., as the user ("USER"). CITY and USER shall be collectively referred to herein as "Parties".

Recitals

- A. Craig Jacobsen owns approximately 525 acres of real property identified as Assessor's Parcel Nos. 068-020-001, 068-020-002, 068-020-004, and 068-020-006, more particularly located and described in Exhibit A attached (hereinafter referred to as the "Farm").
- B. CITY operates the Laguna Wastewater Treatment Plant that produces and is the generator and discharger of dewatered Biosolids ("Biosolids"), a portion of which the CITY desires to reuse by applying to cropland.
- C. USER operates the Farm and desires to receive CITY's Biosolids for application to the cropland on the Farm for the considerations and under the terms and conditions set forth in this Agreement.
- D. USER represents to the CITY that it is fully qualified to accept and spread Biosolids for land application at the Farm.
- E. The parties have negotiated upon the terms pursuant to which USER will receive Biosolids and apply Biosolids to cropland on Farm and have herein reduced such terms to writing.

Agreement

1. Entire Agreement

This Agreement consists of the following documents, in order of precedence, all which as hereby referenced are incorporated herein and made part of this Agreement, and shall be the entire agreement between parties:

- a) This Agreement (including Attachment One – Insurance Requirements);
- b) Exhibit A - Jacobsen Farm

2. Term

The term of the Agreement shall be for a period from date of execution by City to April 30, 2018. CITY and USER may, upon mutual written agreement of all parties, extend this Agreement for up to one 4-year extension, two 2-year extensions, four 1-year extensions, or any combination of extensions not exceeding a total of four years.

3. Biosolids Management System ("BMS") Training

CITY shall provide BMS training to USER on an annual basis to meet CITY BMS and regulatory requirements. CITY shall provide updates as they relate to the CITY's Biosolids Management System Manual dated 3/10/17 (the "BMS Manual") and contractor activities and requirements. CITY shall provide the link to the BMS Manual, a copy of the City's Emergency Response Plan, the City's Biosolids Fact Sheet, an emergency contact list and other contractor related documents to USER deemed necessary at the time of training. USER is responsible for

4. Receipt of Biosolids

USER agrees to receive Biosolids on the Farm from May 1 to October 31 (hereinafter, this period is referred to as the "season"). USER and CITY agree to work cooperatively to identify the appropriate amount of Biosolids to be delivered to the Farm each year based on the number of acres, type of crop and the constituents of the Biosolids. USER and CITY shall agree on the acreage on Farm to receive Biosolids for each then-current crop season. No minimum quantity of Biosolids is guaranteed by this agreement, although the City will attempt to supply as much Biosolids as possible.

5. Biosolids Quality

CITY states and USER understands that the Biosolids provided by the CITY will have been treated by processes to significantly reduce pathogens and will satisfy the requirements of the US EPA 40 CFR, Part 503 regulations for Class B Biosolids. This classification requires low metal content and is satisfactory for use on forage crops with minimum restrictions. It is further understood that CITY and USER will follow all requirements of California Department of Health Services (DHS) guidelines and the US EPA 40 CFR, Part 503 regulations when implementing the Biosolids land application program. CITY agrees to provide USER with summaries of pertinent regulations and guidelines as well as a statement of the Biosolids' chemical quality prior to applying the Biosolids to the Farm, if requested by USER.

6. Biosolids Delivery, Application and Incorporation

6.1 CITY shall supply Biosolids to USER for the term and under the conditions of this Agreement in the amount determined by CITY and USER based on Biosolids availability and the amount that can beneficially applied on the Farm in accordance with Section 4 above. USER agrees to comply with all of CITY's requirements as well as the requirements in the CITY's permits from the San Francisco Bay Regional Water Quality Control Board ("SFBRWQCB") and Sonoma County Department of Health Services ("County Health") as applicable to Biosolids land application, as may be amended from time to time, including:

- a) Biosolids shall be applied by USER at no more than acceptable agronomic rates, i.e. rates at which the applied Biosolids-borne nitrogen does not exceed the estimated nitrogen requirement of the crop.
- b) Biosolids shall be delivered by CITY and spread and incorporated by USER using the following minimum setback distances for Biosolids staging and land application:
 - 1) 10 feet from property lines. This requirement may be waived when property lines are adjacent to properties also using Biosolids as a soil amendment.
 - 2) 500 feet from domestic water supply wells. A lesser setback distance from domestic water supply wells (not to be less than 100 feet) may be used if the discharger can demonstrate to the SFBRWQCB Executive Officer, and SFBRWQCB Executive Officer agrees in writing, that the ground water, geologic, topographic and well construction conditions at the specific site are adequate to protect the ground water using the supply well.
 - 3) 100 feet from non-domestic water supply wells. A lesser setback (not to be less than 25 feet) may be used if the discharger can demonstrate to the SFBRWQCB Executive Officer, and SFBRWQCB Executive Officer agrees in writing, that the ground water, geologic, topographic and well construction conditions at the specific site are adequate to protect the ground water, not including agricultural drains.

ground water, geologic, topographic and well construction conditions at the specific site are adequate to protect the ground water, not including agricultural drains.

- 4) 50 feet from public road and occupied onsite residences.
- 5) 100 feet from surface waters, including wetlands, creeks, ponds, lakes, underground aqueducts and marshes.
- 6) 33 feet from primary agricultural drainage ways.
- 7) 500 feet from occupied non-agricultural building and off-site residences.
- 8) 400 feet from a domestic water supply reservoir.
- 9) 200 feet from a primary tributary to a domestic water supply.
- 10) 2500 feet from any domestic surface water supply intake.

6.2 The CITY shall transport the Biosolids material for land application. The USER shall allow CITY to store Biosolids at a location on the Farm deemed suitable by USER and CITY. Such storage shall be only for the purpose of accumulating Biosolids for efficient application on the Farm. Each season, CITY shall remove any remaining Biosolids from such storage sites immediately following the completion of Biosolids application on Farm and notice from USER that it has completed Biosolids application. USER shall provide all equipment and labor to load and apply the stockpiled material.

6.3 Each season, USER shall inform CITY of its cropping plans and desired available nitrogen application. CITY shall determine the total amount of Biosolids to be applied that season based on USER's desired available nitrogen application and the estimated available nitrogen content of the Biosolids. Such application shall not exceed the estimated crop nitrogen requirement.

6.4 CITY shall deliver and USER shall apply the Biosolids to the Farm. The timing of the Biosolids spreading shall be as mutually agreed upon by CITY and USER. Once spreading is complete USER shall then incorporate the Biosolids into the soil by plowing or disking to a depth of approximately 6 to 10 inches within 72 hours after Biosolids spreading.

6.5 USER understands and agrees that CITY's intent in determining the appropriate Biosolids application rates for the crops is to provide estimated nitrogen requirement of the crops. USER further understands and agrees that, since the Biosolids application rates are based only on estimated crop nitrogen requirements and estimated available nitrogen content of the Biosolids, CITY does not warrant or guarantee that the Biosolids-borne nitrogen application will be the actual nitrogen requirement of the crop and shall not in any way be held responsible by USER for not having supplied the full optimum nitrogen requirement of the crop. USER shall be responsible for determining if additional fertilizer nutrients of any type are necessary and application of additional fertilizer or nutrients shall be at USER's sole cost.

6.6 USER shall be responsible for informing its employees that Biosolids are being applied on the land and shall supply dust masks for those employees during the Biosolids application and incorporation operations.

6.7 USER is required to remove residual Biosolids material from its equipment prior to reentering public roadways.

7. Liming of Soils

USER understands and agrees that the Biosolids/soil mix after incorporation by USER must be at or above pH 6.5. CITY shall be responsible for determining the lime requirement, if any, of the soil prior to Biosolids application and for providing the appropriate amount of lime (calcium carbonate equivalent) to bring the soil pH to 6.5. CITY shall determine the lime requirement through generally accepted sampling and laboratory methods. CITY will deliver the required lime, if any, and USER shall apply the lime onto the soil prior to the USER applying and incorporating the Biosolids into the soil.

8. Special Spraying

USER recognizes that, as a result of the application of Biosolids, excessive weeds may grow with the crop primarily because of the added nitrogen. CITY agrees to reimburse USER, pursuant to Section 12 below, for the cost of the actual herbicide purchased and used by USER on the areas of the USER's farm that received Biosolids during the crop season in which weed spraying is necessary. CITY agrees to reimburse USER after the completion of herbicide spraying, and upon receipt of invoice and a copy of all receipts from USER. USER agrees to select and apply the herbicide at its sole cost. USER shall determine the need for spraying and shall assume all responsibility for the results of the spraying. USER shall apply the herbicide in a safe manner and shall follow all applicable state and county laws and regulations.

9. Site Monitoring

CITY shall be responsible for implementing and conducting any monitoring program required by the SFBRWQCB and County Health and shall be responsible for maintaining and following the permit requirements relative to the application of Biosolids. CITY shall be responsible for maintaining records of Biosolids application including nutrient, metals, and total Biosolids loadings. Said records shall be made available to USER upon request. Also, at the request of USER, CITY shall sample and analyze the drainage water pumped by USER during the wintertime. Any requested sampling and analysis will be conducted a minimum of two (2) times during the pumping season. The laboratory analyses will be for regulated metals and electrical conductivity.

10. Road Maintenance

CITY understands that dust control may be required during the season when Biosolids and Lime are delivered to Farm. CITY shall be responsible for acquiring the services of a contractor to furnish all equipment, labor, transportation and application of "Dust Off" product at the Farm if determined necessary by CITY in its reasonable discretion. Area of application shall be limited to the roads used for Biosolids and Lime delivery, and will be completed twice. The first application shall be done just prior to harvest. The second application shall be done just prior to the hauling of Biosolids and Lime onto the site.

11. Permission to Enter

USER grants permission to CITY, its acting duly authorized agents, employees, officials, or contractors to enter Farm between 6:00 a.m. and 8:00 p.m. on weekdays and 8:00 a.m. and 6:00 p.m. on weekend days to do any necessary work associated with applying the Biosolids and conducting any necessary monitoring of Biosolids-related activities on said property. When entering the Farm, CITY's agents, employees, officials, or contractors shall take reasonable care to not disrupt USER's agricultural operations.

12. Compensation

12.1 As compensation to USER hereunder, CITY shall pay USER as follows:

\$3.11 per wet ton for application of Biosolids,

\$7.07 per ton for application of Lime; and

\$40 per acre for application of herbicides.

12.2 Total maximum compensation to be paid hereunder shall in no event exceed the sum of \$12,500 for spreading of Biosolids and Lime and \$9,500 for spraying of herbicide. The Chief Financial Officer is authorized to pay all proper claims from Charge Number 130807-5321.

13. Payment to the USER

Payment will be made on a calendar-month basis in arrears. The USER shall submit an invoice to the City of Santa Rosa, Compost Facility, 4300 Llano Road, Santa Rosa, CA 95407, along with copies of all receipts. Processing of payment will be delayed for USER's failure to include reference to Agreement (including Number) on the invoice or for failure to maintain current insurance information with the CITY in accordance with insurance requirements hereunder. In no event shall CITY be obligated to pay late fees or interests, whether or not such requirements are contained in the USER'S invoice.

14. Fines

The USER is responsible for payment of any fines charged directly to the USER. Amount for fines charged to the CITY that are a result of deficient or negligent USER performance shall be deducted by the CITY from payments due to the USER.

15. General Conditions

- a) The captions of this Agreement shall have no effect on interpretations of this Agreement or any part thereof.
- b) This Agreement contains agreements of the parties with regard to the subject of the Agreement and cannot be enlarged, modified, or changed in any respect except by written agreement between the parties.

16. Indemnify and Hold Harmless Agreement

USER shall indemnify, defend and hold harmless CITY and its employees, officials and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs and expert witness fees), where same results from or arises out of the performance of the Agreement by USER, its officers, employees, agents, and subcontractors, excepting only that resulting from the sole, active negligence or intentional misconduct of the CITY, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for USER or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

17. Insurance Requirements

USER shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated and made part of this Agreement by this reference. Maintenance of the insurance coverage as set forth in Attachment One is a material element of the Agreement and a material part of the consideration provided by USER in exchange for the CITY's agreement

to make the payments prescribed hereunder. Failure by USER to (i) maintain or renew coverage, (ii) provide the CITY notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the CITY as a material breach of this Agreement by USER, whereas the 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 USER to maintain required insurance coverage shall not excuse or alleviate USER from any of its other duties or obligations under this Agreement. In the event USER, with approval of the CITY pursuant to Section 19 below, retains or utilizes any subcontractor or sub-consultants in the provision of any services to the CITY under this Agreement, USER shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in the "Insurance Requirements" at Attachment One.

18. Termination

18.1 This Agreement may be terminated:

a) By CITY at any time if:

- 1) USER fails to conform to the requirements of this Agreement; or
- 2) USER seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; or
- 3) Any legal proceedings are commenced against USER which may interfere with the performance of this Agreement; or
- 4) USER has failed to supply an adequate working force, or material of proper quality or has failed in any other respect to prosecute the work with diligence and force specified and intended in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of CITY within ten (10) days following the date a written notice thereof by the CITY, then CITY shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement.
- 5) Any cost or expense incurred by CITY arising out of USER's breach or default hereunder, and for CITY's enforcement of these rights, shall be the obligation of USER and may, at CITY's discretion, be deducted from any amounts that may then be owing to USER under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which CITY may be entitled.

b) By CITY or USER upon 30 days' notice to the other in writing of its intent to terminate the Agreement.

c) By CITY effective immediately upon posting written notice if ordered to do so by any government authority having jurisdiction over such matters.

18.2 If the Agreement is terminated by the CITY, USER shall have no claim against CITY based upon damage to or loss of crops due to insufficient nutrients having been applied.

18.3 Any termination of the Agreement shall not relieve CITY or USER of their obligations described in this Agreement pertaining to Biosolids already delivered to Farm.

18.4 Upon such termination, USER shall submit to the CITY an itemized statement of services performed to the date of the termination.

19. Assignment

USER 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. USER agrees that prior to contracting for or otherwise engaging any subcontractors, other persons or entities for use or assistance in performance under this Agreement, the names shall be submitted to and approved by CITY.

20. Independent Contractor

The parties intend that the USER, in performing services herein specified, shall act as an Independent Contractor and shall have control of its work and the manner in which it is performed. It shall be free to contract for similar services to be performed for other employers while it is under contract with CITY. USER is not to be considered an agent or employee of CITY and is not entitled to participate in any pension plan, medical or dental plans, or any other benefit provided by CITY for its employees.

21. Legal Requirements and Permits

USER 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 ("ADA") of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) OSHA; and (iii) the Immigration Reform and Control Act of 1986. It shall be the sole obligation hereunder of USER to obtain any and all licenses, permits and/or clearances necessary and appropriate for performance of the work. USER shall, if requested by CITY, provide certification and evidence of such compliance.

22. Retention of Records

USER shall be required to retain any records necessary to document the charges for goods to be provided or services to be performed and make such records available to the CITY for inspection at the CITY's request for a period of not less than four (4) years.

23. Legality

If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

24. California Law: Venue

This Agreement shall be governed according to the laws of the State of California. Because this Agreement is to be performed in the County of Sonoma, the parties hereto agree that the forum for the adjudication of any dispute regarding the Agreement or enforcement shall be brought exclusively and solely in Sonoma County, California.

25. Binding Parties

The CITY and USER 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 parties' respect of all promises and Agreements contained herein.

26. Waiver

A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent default.

27. Authority; Signatures Required for Corporations

USER hereby represents and warrants to the CITY that it is (a) is a duly organized and validly existing corporation formed and in good standing under the laws of the State of California (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. USER 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 USER 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.

The City of Santa Rosa and Gilardi & Jacobsen Ag Services, Inc. have each caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

28. Notices

Any notice necessary to be given to either party by the other relative to this Agreement shall be in writing. Both parties agree that any such notice shall be effective when deposited, postage paid, in the United States mail addressed as follows:

CITY:
City of Santa Rosa
Biosolids Coordinator
4300 Llano Road
Santa Rosa, CA 95407

USER:
Gilardi & Jacobsen Ag Services, Inc.
Craig Jacobsen/Brian Gilardi
5070 Lakeville Highway
Petaluma, CA 94954

OWNER:
Craig Jacobsen
5070 Lakeville Highway
Petaluma, CA 94954

CITY and USER have executed the Agreement as of the date first written above.

CITY OF SANTA ROSA *MTJ 6/6/17*
A Charter City

By *Genie Quintana*
City Manager

APPROVED AS TO FORM:

[Signature]
City Attorney

USER

Gilardi & Jacobsen Ag Services, Inc.

By *Craig Jacobson*

Name *Craig Jacobson*

Title *Pres.*

By *Karin Bilardi*

Name *Karin Bilardi*

Title *Secretary*

Taxpayer ID # *35-2454704*

CONSENT OF OWNER:

OWNER, Craig Jacobsen, hereby consents to the foregoing Biosolids Land Application Agreement between CITY and USER, for the purposes of carrying out the activities on the Farm as set forth in the Agreement and hereby further grants access to CITY, its contractors and subcontractors, to enter the Farm for the purposes of carrying out such activities.

OWNER:

Craig Jacobsen

By: *Craig Jacobson*
Craig Jacobsen

Title *Owner*

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

- A. Insurance Policies:** Contractor shall, at all times during the term 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 Contractor has no owned autos, then 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. 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 Contractor, its employees, agents and subcontractors. |

B. Endorsements:

- All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
- Liability, umbrella and excess policies shall provide or be endorsed to provide the following:

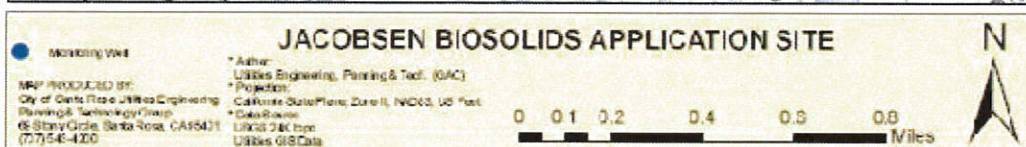
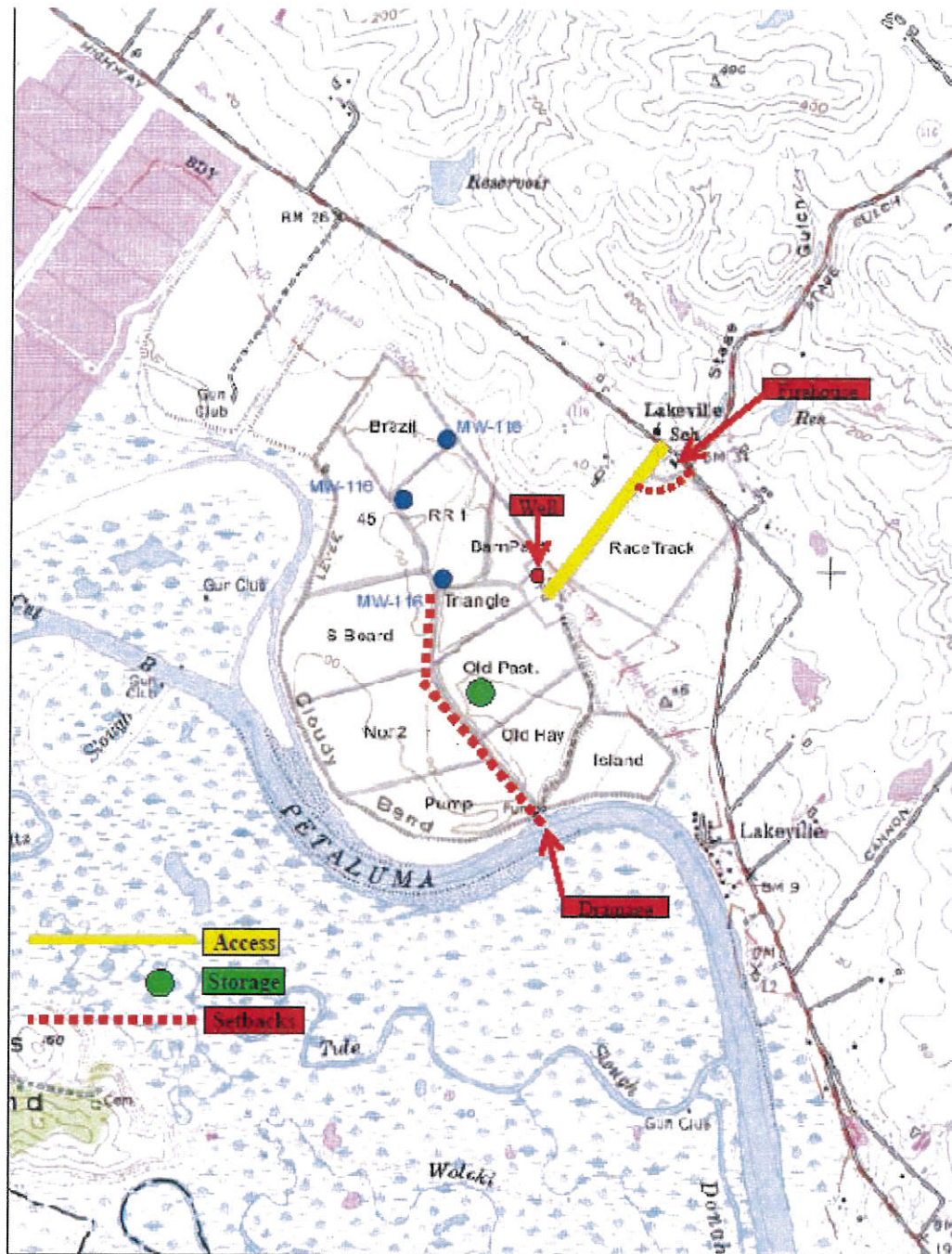
- a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
- b. **The City of Santa Rosa, its officers, agents, employees and 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 Contractor'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: Contractor 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 Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor 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 Contractor or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Contractor 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.

EXHIBIT A



CITY OF SANTA ROSA - UTILITIES ENGINEERING - PLANNING & TECHNOLOGY

