

**CITY OF SANTA ROSA  
PROFESSIONAL SERVICES AGREEMENT  
WITH BURKE, WILLIAMS & SORENSEN, LLP  
AGREEMENT NUMBER \_\_\_\_\_**

This "Agreement" is made as of this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Santa Rosa, a municipal corporation ("City"), and Burke, Williams & Sorensen, LLP a California Limited Liability Partnership, ("Consultant").

**RECITALS**

- A. City desires to retain specialized labor relations services including legal advice, opinion, and/or assistance as requested by the City in connection with labor negotiations and for factfinding.
- 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"). Consultant shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely 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 the terms in Exhibit A and the Agreement, the terms of this Agreement shall control and prevail. The parties agree that any term contained in Exhibit A that adds to, varies or conflicts with the terms of this Agreement is null and void.

**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 one hundred and fifty thousand dollars and no cents (\$150,000.00) The City's Chief Financial Officer is authorized to pay all proper claims from Charge Number 040101-5320.

### **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**

Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") for 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.

### **5. INSURANCE**

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 coverage requirements set forth in the Insurance Requirements at Attachment One.

## **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. TERMINATION**

a. This Agreement may be terminated by either party by giving ten (10) days written notice to the other party of its intent to terminate the Agreement.

b. 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.

## **8. 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:

Fran Elm  
Director of Human Resources  
100 Santa Rosa Avenue, Room 1  
Santa Rosa, CA 95404  
707-543-3060

Consultant Representative:

Carol Stevens  
Attorney at Law  
2440 West El Camino Real, Suite 620  
Mountain View, CA 94040  
650-327-2672

## **9. 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 subconsultants.

d. The provisions of this Section 9 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.

## **10. 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.

## **11. 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.

## **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 December 31, 2014.

## **13. 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 1700-1775, which require prevailing wages (in accordance with DIR schedule at [www.dir.ca.gov](http://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. Conflict of Interest. 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. In the event that the City determines, in its discretion, that Consultant is a "consultant" under the Political Reform Act, 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's Representative 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 Representative 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.

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. Ownership and Use of Property Rights. Unless otherwise expressly provide herein, all original works created by Consultant for City hereunder shall be and remain the property of City. Consultant agrees that any patentable or copyrightable property rights, to the extent created for City as part of the services provided hereunder, shall be in the public domain and may be used by anyone for any lawful purpose.

h. 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.

**14. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS**

Consultant hereby represents and warrants to City that it is (a) a duly organized and validly existing Limited Liability Partnership, 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. 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: Burke, Williams, & Sorensen

TYPE OF BUSINESS ENTITY (check one):  
       Individual/Sole Proprietor

By: \_\_\_\_\_

Partnership  
 Corporation  
 Limited Liability Company  
 Other (please specify: \_\_\_\_\_)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Authorized Persons:

By: \_\_\_\_\_

Print Name: Timothy Davis

Title: Partner

By: \_\_\_\_\_

Print Name: M. Carol Stevens

Title: Partner

APPROVED AS TO FORM:

\_\_\_\_\_

Office of the City Attorney

ATTEST:

\_\_\_\_\_

City Clerk

Taxpayer I.D. No. 951705973

City of Santa Rosa Business Tax Cert. No.

79317

Attachments:

Attachment One - Insurance Requirements

Exhibit A - Scope of Services

Exhibit B - Compensation

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

**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.

<b>Insurance</b>	<b>Minimum Coverage Limits</b>	<b>Additional Coverage Requirements</b>
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. <b>Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.</b>
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 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 contract. 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. Self-insured retentions above \$10,000 must be approved by the City. At the 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.

## **EXHIBIT A – SCOPE OF SERVICES**

Assist the Director of Human Resources and Employee Relations Manager, and/or designees, in advising and consulting with the City Council and the City Manager on matters relating to factfinding proceedings, including but not limited to:

- Acting as the Chief Negotiator or City's Panel Member for a factfinding proceeding at the City's request;
- Providing or assisting in providing reports and/or presentations as requested to senior management and/or the City Council regarding the status of factfinding proceedings, providing other progress reports and recommendations as needed;
- Advising the City as needed in factfinding, assisting in the selection of a neutral arbitrator for factfinding, and preparing and presenting the City's interests in factfinding, if necessary;
- Assisting with necessary fact research for factfinding, guide the City's formulation and preparation of cost analysis of management and union proposals;
- Assisting staff, identifying and recommending management goals and parameters for factfinding and settlement patterns among bargaining units to the City Council, and assisting in formulating and drafting the management position statements and possible settlement agreements consistent with Council parameters;
- Assisting in the development of overall labor relations strategy for factfinding and settlement patterns among bargaining units;
- Developing specific settlement agreements; and
- Assisting the City in developing and disseminating consistent messages to the public and employees while avoiding unfair labor practice charges.

## EXHIBIT B

### FEES AND HOURLY RATES

Staffing	Hourly Rate
Partners	\$275 - \$295
Associate Attorneys	\$225 - \$250
Paralegals	\$135

Effective January 1, 2013, and on each January 1 thereafter, the foregoing base rates shall be increased based on the U.S. Department of Labor Bureau of Labor Statistics Los Angeles-Riverside-Orange City Consumer Price Index-All Urban Consumers ("CPI-U"), using the CPI-U for October 2008 as the base and the value for October 2009 (and each October thereafter) to escalate the hourly rates in the ratio of the most recent October CPI-U value to that of the October 2008 CPI-U value, rounded up to the nearest \$5 increment.

The following U.S. department of Labor, Bureau of Labor Statistics (BLS) web site page will be the source of the date utilized (if the URL is changed, the parties shall agree on the replacement web page to be as close as reasonably possible to the page detailed herein):

[http://data.bls.gov/PDO/servlet?SurveyOutputServlet?date\\_tool=dropmap&series\\_id=CUURA421SAO,CUUSA421SA0](http://data.bls.gov/PDO/servlet?SurveyOutputServlet?date_tool=dropmap&series_id=CUURA421SAO,CUUSA421SA0)

### EXPENSES, COSTS & BILLING PRACTICES

We routinely charge our clients for our direct out-of-pocket expenses and costs incurred in performing the services. These costs and expenses commonly include such items as reproduction of documents (currently \$.20 per page), facsimile (currently \$1.00 per page), mileage reimbursement for travel at the IRS approved rate (currently 55.5 cents per mile) beyond routine travel expenses, long distance telephone calls and other costs reasonably and necessarily incurred in performing services for the City. We do not charge a service fee or overhead for cost reimbursement items. These expenses are payable whether or not the transaction is closed.

Expense	Rate
In-house reproduction charges	
Black and white	\$0.20 per page
Color	\$1.00 per page

Facsimile	\$1.00 per page
Long distance telephone calls	At cost
All other costs reasonably and necessarily incurred in performing services for the City	At cost