

**CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH BODEAN COMPANY INC.
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2017, by and between the City of Santa Rosa, a municipal corporation ("City"), and Bodean Co., Inc., a California Corporation, ("Contractor").

RECITALS

- A. City desires to contract for asphalt concrete supplies.
- B. City desires to retain a qualified contractor to conduct the services described above in accordance with the terms of this Agreement.
- C. Contractor represents to City that it is fully qualified to conduct the services described above.
- D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in Exhibit A. Contractor 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 Contractor 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. 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. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in the scope of services. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibit A shall not exceed the total sum of \$763,189. The Chief Financial Officer is authorized to pay all proper claims from various Charge Numbers.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services as set forth in Exhibit A.

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c.1 below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and 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 interest, whether or not such requirements are contained in the Contractor's invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

d. Business Taxes. Contractor shall pay to the City when due all business taxes payable by Contractor 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 Contractor.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for one year, commencing on the date it is made above. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for up to four (4) additional one year terms.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor 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 Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the 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 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. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's

discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor 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 the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of 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 Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

9. INSURANCE REQUIREMENTS

Contractor 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 herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor 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 Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS; NONDISCRIMINATION

a. Legal Requirements and Permits. Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor 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) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor

Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

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

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement 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.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, 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.

17. ENFORCEMENT OF AGREEMENT

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 located 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.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor'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 Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor 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 Contractor'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 Contractor, in the performance of Contractor'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 Contractor for accomplishing such results. To the extent that Contractor 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 Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor 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 Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. 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 Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, 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 affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

<u>City</u>	<u>Contractor</u>
Brandalyn Tramel Purchasing Agent 631 First Street, 2 nd Floor Santa Rosa, California 95404 Phone: (707) 543-3706 Fax: (707) 543-3723	Josh Cleaver Bodean Co., Inc 1060 N. Dutton Avenue Santa Rosa, CA 95401 Phone: (707)576-8205 X4105

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) 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. Contractor 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 Contractor 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.

**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:

1. 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.
2. 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

SPECIAL PROVISIONS

The City intends to award multiple contracts from this Invitation for Bid. Contracts will be issued on the basis of best material prices. The decision as to which contracts to order from will depend on the availability and quality of materials, price, location of jobs, time restraints, etc. from the City customers' standpoint.

The City recognizes the limitations of hot mix asphalt during periods of peak demand by all users, and will undertake prior scheduling of all transport vehicles to the best of its ability with the supplier. However, should it not be possible in certain instances for the supplier to make material available to the City of Santa Rosa, the City reserves the right to obtain the required material from other vendors. The vendor shall have no recourse or claim against the City for any such purchases.

Delivery: Asphalt Concrete products listed would be F.O.B. Suppliers Plant. Bidder shall state the location of said plant in the Bidder Required Data Section of this Invitation.

Inventory: The contractor shall be responsible for stocking and inventorying sufficient quantities of the specified products under the contract.

Plant Closure: In event of a plant closure, resulting in the unavailability of the products specified, the contractor shall be required to provide the City of Santa Rosa with 48 hours advance notice prior to closing of their production facility. This notification shall be made by telephone communication to City staff.

Estimated Quantities: The quantities shown in the schedule are an estimate calculated upon prior purchase records. The quantities shown may be considered minimum; however, the city, based on need, may increase or decrease said quantities

Note: Vendor will accept the City's concrete and asphalt at no additional charge.

GENERAL PROVISIONS
IFB-MATERIALS or SERVICES

BIDS: Discounts for prompt payment must be identified in your bid response otherwise prices will be considered Net 30. Prompt payment discounts of less than 20 days following final acceptance of the equipment/materials by the City will not be factored into the evaluation of bids. Unless prices and all information requested are complete, bid may be disregarded and given no consideration.

This Invitation For Bids shall result in a firm, fixed price contract to purchase.

All prices and bids must be in ink or typewritten, unless responding by electronic submission. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the bid.

All quotes mailed must be signed with the firm's name, and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

SUBMISSION OF BIDS: Each bid must be submitted on the prescribed form, signed, mailed, or electronic submission, subject to the Invitation For Bid Provisions and Specifications. For mailed responses, each bid must be signed as indicated above.

Information must be furnished complete in compliance with the terms, conditions, provisions and specifications of the Invitation For Bids. The information requested and the manner of submission, are essential to permit prompt evaluation of all bids on a fair and uniform basis. Accordingly, the City reserves the right to declare as non-responsive, and reject any bid in which material information requested is not furnished or where indirect or incomplete answers or information is provided.

Bids shall be for the total net price including all applicable taxes and charges, delivered F.O.B., City of Santa Rosa.

LOCAL VENDOR PREFERENCE: A one percent (1%) preference shall be granted to local bidders. A local bidder is defined as a business entity with its principal place of business located within the city limits of the City of Santa Rosa. To qualify for the preference, local bidders must submit proof of the address of its principal place of business and a copy of their current City Business Tax Certificate. Proof of address is normally the address to which Purchase Orders or contracts and payments will be sent. Copies of current City Business Tax Certificate must be submitted with each bid for which a preference is claimed. The total amount of preference granted in a single bid shall not exceed \$5,000.00. Local preference only applies to the procurement of material, supplies, equipment, or services, and will not apply to bids conducted cooperatively with other public agencies nor when prohibited by the terms of a Federal, State or private grant of funds.

SANTA ROSA BUSINESS TAX: The successful bidder will be required to pay the City of Santa Rosa business tax before commencing work on this project. For information regarding the business tax, contact Revenue and Collections at (707) 543-3170.

ALL OR NOTHING BIDS: If your bid is on an "all or nothing" basis, so state as such in the Invitation For Bids. If a seller elects to bid "all or none" as a part of his bid, the City will be bound by that condition and will not accept bids on individual items or group items for that bid. If the City awards to an "all or nothing" seller, that award shall be for the proposal as a whole or no part thereof.

OTHER AGENCY "PIGGY-BACK" PROCUREMENTS: Other municipalities, fire districts or public agencies in Sonoma County may be interested in purchasing equipment as procured through this solicitation. The seller is to indicate in this Invitation For Bids if pricing offered in this bid will be extended to other public agencies in this area not later than one hundred twenty (120) days after award by the City of Santa Rosa. Any such "piggy-back" awards will be made independently by each agency, and the City of Santa Rosa is not an agent, partner or representative of these agencies and is not obligated or liable for any action of debts that may arise out of such independently negotiated "piggy-back" procurements.

DELIVERY CHARGES: Delivery charges to the City of Santa Rosa shall be listed as a separate line item where indicated in this Invitation For Bids, or the electronic format.

DELIVERY: All Purchase Order or Contracted goods shall be delivered F.O.B. destination, delivery charges prepaid, unless otherwise shown on the front of the Purchase Order or Contract. The goods shall be delivered to the location below, unless otherwise indicated:

CITY OF SANTA ROSA
MUNICIPAL SERVICE CENTER WAREHOUSE
55 STONY POINT ROAD
SANTA ROSA, CA 95401

Delivery will be made on or before the date indicated on the front of the Purchase Order or Contract. Seller shall be liable for damages resulting from Seller's failure to deliver by the delivery date or in conformance with this Purchase Order or Contract. Goods or the tender of delivery that fail in any respect to conform to the Purchase Order or Contract will not be accepted unless the City gives its written acceptance.

WARRANTY: The seller shall state on the Required Data Form the terms and conditions of the warranty being offered with the equipment bid.

Seller warrants that all goods and services provided to City are free from defects. At no cost to the City, Seller shall furnish and install all parts and pay any costs to repair goods or materials damaged by defective workmanship during Seller's and Manufacturer's warranty periods.

MATERIAL AND EQUIPMENT SPECIFIED BY NAME: Whenever any material or equipment is specified by patent or proprietary name or by the name of the manufacturer, unless stated differently, such specification shall be considered as if followed by the words "or acceptable equal", whether or not such words appear. The Seller may offer material or equipment with equal or better qualities and performance in substitution for those specified which he considers would be in the City's interest to accept. No verbal offers for substitution will be acknowledged or considered from sellers, distributors, manufacturers or subcontractors. Any such offers shall be made in writing to the

Purchasing Agent for his consideration with the submission of the proposal and the Seller shall include sufficient data which, together with any other data the City may require, will enable the City to assess the acceptability of the material or equipment. Such acceptance by the City shall not relieve the Seller from full responsibility from the efficiency and quality and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified by name.

It should be understood that specifying a brand name, components and/or equipment in these specifications shall not relieve the Seller from full responsibility to produce the products in accordance with the performance warranty and contractual requirements. The Seller is responsible for notifying the City of any inappropriate brand name, component and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

MATERIALS & WORKMANSHIP: Unless otherwise specified in the Invitation For bids, materials used shall be of new and recent manufacture and of best quality.

BID POSTPONEMENT AND AMENDMENT: The City of Santa Rosa reserves the right to revise or amend the specifications up to the time set for opening the bids. Such revisions and amendments, if any, shall be announced by an addendum to this solicitation. Prospective sellers who have registered for this solicitation shall be notified of all addenda. If the revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the City shall enable Sellers to revise their bids. In any case, the bid opening shall be at least five (5) working days after the last addendum, and the addendum shall include an announcement of the new date, if applicable, for the opening of bids.

SINGLE BID RESPONSE: If only one bid is received in response to the Invitation For Bids, a detailed cost proposal may be requested of the single Seller. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

ESTIMATED QUANTITIES: The quantities shown in the Invitation For Bids may be an estimate only. If the exact quantities cannot be predetermined, the City reserves the right to adjust quantities as deemed necessary to meet its requirements.

BID WITHDRAWAL: After the quotes are opened, quotes may not be withdrawn for ninety (90) calendar days, unless approved by the City Purchasing Agent. Prior to the date/time set for the bid due date, however, bids may be modified or withdrawn by the Seller's authorized representative in person, or by written notice, or updated in the electronic submittal. If bids are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the bid. Written or faxed notices shall be received in the office designated in the Invitation For Bids no later than the exact date/time for the bid opening.

AWARD: The City of Santa Rosa reserves the right to accept bids, award bids and/or not award bids on individual items listed, on group items, or on the proposal as a whole; to reject any and all bids, to waive any informality in the bids, and to accept the bid that appears from all consideration to be for the best interest of the City of Santa Rosa.

Notice of bid award will not normally be provided to non-successful bidders. Receipt of the official Purchase Order or Contract provided by the City of Santa Rosa covering the supplies, materials, equipment or services as described in the Bid will indicate the award of the bid and a contract to purchase.

PROTEST PROCEDURE: All parties wishing to file a protest shall comply with the procedures set forth below.

Proposer may file a written protest with the Purchasing Agent (City Code 3-09.180) no later than seven calendar days following the posting of award recommendation on the City's online vendor portal website, or fourteen days upon receipt of non-responsive notice. The protest must include the name address and telephone number of the protestor and or the person representing the protesting party. The written protest must set forth in detail all grounds for the protest including and not limited to all facts, supporting documentation, legal authorities and arguments in support of the grounds for the protest. All factual contentions must be supported by evidence. Any matters not set forth in the written protest shall be deemed waived. Any protest not conforming to the requirements of this Section may be rejected as invalid.

The Purchasing Agent shall review the merits and timeliness of the protest and issue a written decision to the protestant within ten calendar days of receipt of the protest.

Appeal of Written Decision

Any protestant may appeal the decision of the Purchasing Agent to the City Council or Board of Public Utilities. All appeals shall be initiated by filing a written notice of appeal with the City Clerk's office, with applicable fees, within 15 days of the date of the Purchasing Agent's written decision (City Code 1-20.020). The appeal must include the name address and telephone number of the appellant and or the person representing the appealing party. The letter of appeal shall include the original protest and any additional supporting information including without limitation all facts supporting documentation legal authorities and arguments in support of the grounds for the appeal. All factual contentions must be supported by evidence. Any matters not set forth in the letter of appeal shall be deemed waived. Any letter of appeal not conforming to the requirements of this Section may be rejected as invalid.

If there is a protest, or an appeal, no award will be issued until a final determination has been made by the Purchasing Agent, or City Council, or Board of Public Utilities.

Protests received after the deadline will not be accepted.

PURCHASE ORDER OR CONTRACT ACKNOWLEDGMENT: The successful Seller, after receipt of a City of Santa Rosa Purchase Order or Contract, shall be required to furnish the City Purchasing Agent, if applicable, a copy of the factory order acknowledgment or production date(s) for the equipment/material purchased.

CONTRACT ADMINISTRATION: Except as otherwise specifically provided in this Invitation For Bids, and the resulting Purchase Order or Contract, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified. Service may also be made by mail, by placing a notice, submittal or communication in an envelope with the proper first-class postage affixed thereto and addressed as indicated, and depositing said envelope with the United States Postal Service.

PERFORMANCE OF SERVICES: With respect to the performance of services under this Purchase Order or Contract, Seller shall perform all services in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Seller's trade or profession. Seller hereby warrants that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Seller's work by City shall not operate as a waiver or release. Seller shall assign only competent personnel to perform services hereunder. In the event that at any time the City, in its sole discretion, desires the removal of any person or persons assigned to perform services hereunder, Seller shall remove such person or persons immediately upon written notice from City. Seller shall perform the services described on the Purchase Order or Contract within the time or dates set forth therein.

OPTION TO INCREASE QUANTITY OF ORDERED UNITS: The City reserves the right to increase the quantity of units shown on this Invitation For Bids by issuance of an amendment to the original Purchase Order or Contract, or an additional Purchase Order not later than ninety (90) days after award of bid. The successful Seller agrees to furnish to the City the additional units at the unit price offered in this Bid.

MODIFICATION: The City may at any time prior to the delivery date specified herein, issue a written amendment or change Purchase Order or Contract for the modification of the Purchase Order or Contract. Such modification(s) shall be the result of negotiation and agreement between both parties. No change in this Purchase Order or Contract shall be made unless the City gives its prior written approval. Seller shall be liable for all direct and consequential damages resulting from any unauthorized changes to the Purchase Order or Contract.

Oral change Purchase Order or Contracts are not permitted. No change in this Invitation For Bids or resulting Purchase Order or Contract shall be made unless the City of Santa Rosa gives its prior written approval from the office of the Purchasing Agent. The Seller shall be liable for all costs resulting from any unauthorized changes to the Invitation For Bids, Purchase Order or Contract.

TERMINATION OF CONTRACT TO PURCHASE: If at any time: 1) Seller fails to conform to the requirements of the Purchase Order or Contract, or breaches any of these Terms and Conditions; 2) Seller seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Seller which may interfere with Seller's performance hereunder; or 4) Seller has failed to supply an adequate working force, or material of proper quality, or has failed to deliver goods or in any other respect to prosecute the work with the diligence and force specified and intended herein, notice thereof may be served in writing upon Seller, and should Seller reject or refuse to provide the means for the satisfactory conformance with the Purchase Order or Contract as directed by the Purchasing Agent within the time specified in such notice, the City in any such case shall have the right and power at its option and without prejudice to any other right it may have, to terminate the Purchase Order or Contract.

TERMINATION FOR CONVENIENCE: The Purchase Order or Contract may be terminated by the City by giving ten (10) day notice to Seller in writing of its intent to terminate the Purchase Order or Contract. Upon such termination, Seller shall submit to the City an itemized statement of services performed or goods delivered as of the termination date. City shall not in any manner be liable for lost profits that might have been made by Seller had the Purchase Order or Contract not been terminated or had Seller completed the services required by the Purchase Order or Contract.

INSPECTION: The City reserves the right before payment or acceptance to inspect all goods and workmanship, and shall have the right to reject all goods and workmanship that do not conform to the Purchase Order or Contract, provided; however, the City is under no duty to make such inspection. The City reserves the right to extend the date of acceptance of goods or workmanship in the event it determines that the nonconforming goods or workmanship can be seasonably cured.

TITLE: Title to goods shall pass to the City at the F.O.B. point designated under **DELIVERY**, subject to the City's right to reject the goods.

ACCEPTANCE AND PAYMENT: Acceptance shall be made when the City determines the goods or services conform to the Purchase Order or Contract, or when City notifies Seller that it will accept the goods or services despite nonconformity. Unless otherwise stated in the Purchase Order or Contract, payment terms are net 30 days. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Seller's invoice. Payment will be scheduled upon complete delivery and acceptance of all goods or services and receipt of an invoice acceptable to the City. Invoices for goods or services provided in June or for any goods or services not previously invoiced shall be submitted to City no later than July 10 to facilitate City fiscal year end closing. The City reserves the right to withhold up to ten (10%) percent of the Purchase Order or Contract price in the event it conditionally accepts nonconforming goods or services. In connection with any cash discount specified in the Purchase Order or Contract, time will be computed from the date of the complete acceptance of the goods or services, or from the date correct invoices are received at the location specified on the

Purchase Order or Contract, whichever date is later. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

For services, payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or Purchase Order or Contract. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Seller for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Seller's failure to include reference to Agreement (including number) on the invoice and 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 interest, whether or not such requirements are contained in the Seller's invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Seller's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or Purchase Order or Contract. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

INDEPENDENT SELLER: The parties intend that Seller, in performing services herein specified, shall act as an independent Seller 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. Seller 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.

ASSIGNMENT AND SUBCONTRACTING: Seller shall not assign or subcontract the Purchase Order or Contract, or any part thereof, without the previous written consent of City, nor shall Seller assign, by power of attorney or otherwise, any of the money payable under this Purchase Order or Contract unless the prior written consent of the City has been obtained. No right under this Purchase Order or Contract, nor any claim for money due, or to become due hereunder, shall be asserted against the City, or persons acting

for the City, by reason of any so-called assignment of this Purchase Order or Contract or any part thereof, or to become due under this Purchase Order or Contract. The instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or goods supplied.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by subcontractor, the subcontract shall be immediately terminated by Seller upon notice from the City. Seller shall be fully responsible and accountable to the City for the acts and omissions of any subcontractor, and of persons directly or indirectly employed by the subcontractor, as it is for the acts and omissions of persons directly employed by Seller. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

INDEMNIFY AND HOLD HARMLESS AGREEMENT: Seller 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 the same arises out of the performance of this Purchase Order or Contract by Seller, its officers, employees, agents, or subcontractor, excepting only that resulting from the sole active negligence or intentional misconduct of 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 Seller or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts. Seller shall be liable to City for any loss of or damage to City property arising from Seller's negligence or willful misconduct.

PATENTS AND ROYALTIES: All costs, fees, royalties and claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of goods herein shall be paid by Seller. Should Seller, its agents or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the terms herein, Seller shall promptly substitute other articles, materials or appliances in lieu thereof of equal finish, efficiency, quality, suitability and market value and satisfactory in all respects to City. In the event that City elects, in lieu of such substitution, to have supplied and to retain and use any inventions, articles, materials, or plans as may be required to be supplied, Seller shall pay such royalties and secure such valid licenses as may be requisite for City, its officers, agents and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding at law or equity on account thereof. Should Seller neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then City shall have the right to make such substitution or City may pay such royalties and secure such licenses and charge the Seller even though final payment under the contract may have been made.

FEDERAL AND STATE TAX: Prices quoted shall not include Federal Excise Tax. California Sales Tax of eight and one half percent (8.50%) will be paid in accordance with the purchase order or contract payment schedule.

BUSINESS TAXES: Seller shall pay to City, when due, all business taxes payable by Seller under the provisions of Chapter 6-04 of the Santa Rosa City Code. City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Seller.

LEGALITY: If any provision of the Purchase Order or Contract is 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.

CALIFORNIA LAW: The Purchase Order or Contract shall be governed according to the laws of the State of California. The adjudication of any disputes related to the Purchase Order or Contract shall occur exclusively and solely in Sonoma County.

COMPLIANCE WITH LAWS AND REGULATIONS: All materials, parts and equipment furnished pursuant to the Purchase Order or Contract shall be in compliance with the laws and regulations of the State of California and of the Occupational Safety and Health Administration ("OSHA"). Seller shall, if requested by the City, supply certification and evidence of such compliance.

RETENTION OF RECORDS: Seller shall be required to retain any records necessary to document the charges for goods provided and services performed and make such records available to City for inspection at the City's request for a period of four years.

RECYCLED CONTENT, RECYCLABILITY (If Applicable): Recycled Content Preference: It is the City policy, whenever practicable, to purchase functional products which contain, in Purchase Order or Contract of preference:

- the highest percentage of post-consumer recovered material available in the marketplace; and
- the highest percentage of secondary waste recovered material available in the market place.
- **Recyclability and Waste Reduction:** In addition to the recovered material content of a product, important criteria in selecting products shall also be:
- the ability of the product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs; and the volume and toxicity of waste and by-product a given product and its packaging generate in their manufacture, use, recycling, and disposal. Products and packaging designed to minimize waste and toxic by-products in their manufacture, use, recycling, and disposal shall be preferred.

Equipment Compatibility: Equipment purchased or rented by the City shall be compatible, whenever practicable, with the use of recycled-content products.

Definitions: For the purposes of this general provision, a "recycled product" means all materials, goods, and supplies, no less than 50% of the total weight of which consists of secondary and post-consumer waste with not less than 10% of its total weight consisting of post-consumer waste. "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item, and does not include manufacturing waste. "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. [Source: California Public Contract Code, Section 12200]

BID CONTENTS: This bids consists of the Invitation For Bids, Bid, Provisions, Specifications, Attachments and other terms and conditions as are attached or incorporated by reference in the schedule of the Invitation For Bids.

Exhibit A

ATTACHMENT B - PRICE SHEET

Item #	Qty	Unit	Bid Item	Unit Price	Total Amt
1.	3000	Tons	¼" Asphalt Concrete	\$ <u>74.⁰⁰</u>	\$ <u>222,000.⁰⁰</u>
2.	3000	Tons	¼" Asphalt Concrete w/AS	\$ <u>76.⁰⁰</u>	\$ <u>228,000.⁰⁰</u>
3.	100	Tons	3/8" Asphalt Concrete	\$ <u>74.⁰⁰</u>	\$ <u>7,400.⁰⁰</u>
4.	100	Tons	3/8" Asphalt Concrete w/AS	\$ <u>76.⁰⁰</u>	\$ <u>7,600.⁰⁰</u>
5.	1500	Tons	½" Asphalt Concrete	\$ <u>72.⁰⁰</u>	\$ <u>108,000.⁰⁰</u>
6.	1500	Tons	½" Asphalt Concrete w/AS	\$ <u>74.⁰⁰</u>	\$ <u>111,000.⁰⁰</u>
7.	100	Tons	¾" Asphalt Concrete	\$ <u>72.⁰⁰</u>	\$ <u>7,200.⁰⁰</u>
8.	100	Tons	¾" Asphalt Concrete w/AS	\$ <u>74.⁰⁰</u>	\$ <u>7,400.⁰⁰</u>
9.	100	Tons	Easy Street Asphalt	\$ <u>N/A</u>	\$ <u>N/A</u>
10.	30	Tons	Topeka	\$ <u>81.⁰⁰</u>	\$ <u>2,430.⁰⁰</u>
11.	30	Tons	Berm Mix	\$ <u>79.⁰⁰</u>	\$ <u>2,370.⁰⁰</u>
12.	5000	Gals	SS-1 Emulsified Asphalt-Gallon	\$ <u>N/A</u>	\$ <u>N/A</u>
			Sub Total		\$ <u>703,400.⁰⁰</u>
			Tax (8.5%)		\$ <u>59,789</u>
			Grand Total		\$ <u>763,189.⁰⁰</u>

Note: Dumped Broken Concrete and Asphalt are to be accepted by the vendor at no charge to the City. *JK*

Note: Fuel charges will not be acceptable. Quantities above are estimates only. *JK*

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REQUIRED

DATA

FORMS

Note: Required Data Forms must be completed and attached as part of your bid response.

List of Forms:

Exceptions to Specifications

Designated Contact

Signature Page

Exhibit A

ATTACHMENT A MINIMUM SPECIFICATIONS

Bidder Compliance		SECTION A	
Yes	No	Item #	Description
<input checked="" type="checkbox"/> J.C.	<input type="checkbox"/>	1-4	Technical: Asphalt concrete shall meet the requirements of City of Santa Rosa Construction Specifications for Public Improvements, AND Section 39 of the State of California Department of Transportation (CalTrans) Standard Specifications.

1/2" Medium spec.
Hot Mix Asphalt (HMA) and Warm Mix Asphalt (WMA)

Aggregate Gradation:

3/4"	100%
1/2"	95-100
3/8"	80-95
no. 4	54-71
no.8	38-54
no.30	17-32
200	2-8

The use of Recycled Asphalt Pavement (RAP) may also be used at a rate of no more than 20% of the virgin aggregate blend and not to exceed 4% moisture within the RAP stockpile/sample.

The use of a Liquid Anti-Strip agent (LAS or AS) at a dose rate of 0.05-0.10% by weight of binder must be used in all Hot Mix Asphalt and Warm Mix Asphalt. The LAS shall be AD-here LOF 65-00 or Morlife 5000 or equivalent.

J.C.

REQUIRED DATA FORMS

Exceptions to the Specifications

Exceptions to the specifications of any bid items stated herein shall be fully described in writing by the contractor in the space provided below:

NONE DC

Lined area for writing exceptions to specifications.

REQUIRED DATA FORMS

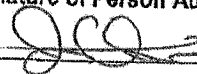
Designated Contact & Signature Page

Indicate in the space provided below, the designated contact individuals name and address as requested under Notification in the General Provisions Section of the Request For Quotations.

<u>City of Santa Rosa</u>	<u>Vendor</u>
<p>Amy Carter Buyer 635 1st Street - 2nd Floor Santa Rosa, CA 95404 (707) 543-3702 Voice (707) 543-3703 Fax</p>	<p>BODEAN COMPANY 1060 N. Dutton Ave Santa Rosa, CA 95401</p>

In compliance with the bid documents, the undersigned offers and agrees, if this Quotation is accepted, within ninety (90) calendar days from date of opening, to furnish any or all of the items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the Schedule. Note: Prompt Payment Discounts - discounts for prompt payment will be taken into consideration in determining lowest bid:

_____ percent, 20 calendar days; _____ percent, 30 calendar days.

<p>Name and Address of Bidder:</p> <p>BODEAN COMPANY 1060 N. Dutton Ave Santa Rosa, CA 95401</p> <p>Phone No.:</p>	<p>Signature of Person Authorized to Sign:</p> <p></p> <p>Type Name: JOSH CLEAVER</p> <p>Type Title: Director of Sales</p> <p>Date of Bid: 3/30/2017</p>
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