

**CITY OF SANTA ROSA  
PROFESSIONAL SERVICES AGREEMENT  
WITH [NAME OF CONTRACTOR]  
AGREEMENT NUMBER \_\_\_\_\_**

This "Agreement" is made as of this \_\_\_\_ day of \_\_\_\_\_, 2022 [leave date blank until all parties have signed or until Council approves], by and between the City of Santa Rosa, a municipal corporation ("City"), and [add Contractor's full name, for example, "XYZ Sales Corporation" or "ABC Consulting, LLC" or "ABC Enterprises, LP" or "John Smith, dba Smith Consulting"], a [add type of legal entity and state of entity formation or incorporation, for example, a "California Corporation" or a "Delaware Limited Liability Company" or a "Nevada Limited Partnership" or a "sole proprietor"] ("Contractor").

**R E C I T A L S**

A. City desires to retain technical advisory, project management, construction management and inspections services for the Hearn Community Hub Project.

B. City desires to retain a responsible and qualified firm to conduct the services described above in accordance with the Scope of Services as more particularly set forth in Exhibit A to this Agreement.

C. Contractor represents to City that it is a responsible firm composed of highly trained professionals with the ability and skills necessary to successfully perform the services hereunder under the terms and conditions of this Agreement.

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 ("Scope of Services") (scope of services will be taken from Appendix A of RFP and will be Exhibit A to this agreement when executed). Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by 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. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Contractor and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

**2. COMPENSATION**

a. City shall pay Contractor for services rendered pursuant to this Agreement at the rates, times and in the manner set forth in Exhibit B. (negotiated from Exhibits 4 and 5 of the RFP) Contractor 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 Contractor for all costs of services, including, but not limited to, direct costs of labor of employees engaged by Contractor, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses and charges of Contractor, 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 Contractor's invoice.

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

### **3. DOCUMENTATION; RETENTION OF MATERIALS; ACCESS TO RECORDS**

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

b. Contractor 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.

c. Contractor shall maintain the records and any and all other records pertinent to this Agreement for a period of four (4) years after completion of all services hereunder.

d. Contractor agrees to provide City, the State of California, the American Rescue Plan Act (ARPA) Administrator, the Comptroller General of the United States, and any or all of their authorized representatives, access to any books, documents, papers, and records of Contractor which are pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

e. Contractor agrees to permit all or any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

f. Contractor agrees to provide the ARPA Administrator or his authorized representatives access to work sites pertaining to the services being performed under this Agreement.

### **4. INDEMNITY**

a. Contractor shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings,

administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its officers, employees, or agents, in said performance of professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of City.

b. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 4, nor shall the limits of such insurance limit the liability of Contractor hereunder. This Section 4 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 18(b), below. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

## **5. INSURANCE**

a. Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." (Appendix D of the RFP) 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 Contractor in exchange for City's agreement to make the payments prescribed hereunder. Failure by Contractor 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 Contractor, 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 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 City pursuant to Section 6 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 coverages set forth in the Insurance Requirements in Attachment One.

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

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

## **6. ASSIGNMENT**

Contractor 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. Contractor agrees that the City shall have the right to approve any and all subcontractors to be used by Contractor in the performance of this Agreement before Contractor contracts with or otherwise engages any such subcontractors.

## **7. NOTICES**

Except as otherwise provided in this Agreement, any notice, submittal or communication

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

City Representative:

Contractor Representative:

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

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

## **8. INDEPENDENT CONTRACTOR**

a. It is understood and agreed that 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 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

## **9. ADDITIONAL SERVICES**

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

## **10. SUCCESSORS AND ASSIGNS**

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

## **11. TERM, SUSPENSION, TERMINATION FOR CONVENIENCE AND CAUSE**

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

b. City shall have the right at any time to temporarily suspend 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 upon written notice of termination to Contractor. Upon such termination, Contractor 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 Contractor 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 Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement. Contractor 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 Contractor.

d. City shall have the right to terminate this Agreement for cause upon written notice to Contractor following an Event of Default. The following shall be "Events of Default" hereunder and the term "Event of Default" shall mean, whenever it is used herein, any one or more of the following events:

(i) The failure by Contractor to perform any obligation under this Agreement, which by its nature Contractor has no capacity to cure;

(ii) The failure by Contractor to perform any other obligation under this Agreement, if the failure has continued for a period of ten (10) days after the City demands in writing that Contractor cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Contractor may have a longer period as is necessary to cure the failure, but this is conditioned upon Contractor's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Contractor shall indemnify and defend the City against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(iii) Any of the following: A general assignment by Contractor for the benefit of Contractor's creditors; any voluntary filing, petition, or application by Contractor under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise;

(iv) The appointment of a trustee or receiver to take possession of all or substantially all of Contractor's assets; or the attachment, execution or other judicial seizure of all or substantially all of Contractor's assets or of Contractor's interest in this Agreement, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Contractor, or any general partner of Contractor if Contractor is a partnership, or

(a) a petition to have Contractor, or any partner of Contractor if Contractor is a partnership, declared bankrupt, or

(b) a petition for reorganization or arrangement of Contractor under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days.

(v) Any representation or warranty related to this Agreement made by any agent of Contractor is determined to have been false or misleading in any material respect at the time made.

## **12. REMEDIES UPON DEFAULT**

This Section 12 shall apply in the event the amount payable under this Agreement exceeds the simplified acquisition threshold as determined pursuant to section 1908 of title 41 of the United States Code, or \$150,000, whichever amount is greater.

a. Remedies on Event of Default. Upon the occurrence of an Event of Default as defined in Section 11, City shall have the right upon written notice to Contractor, in addition to any other rights or remedies available to City at law or in equity, to:

(i) Terminate this Agreement and all rights of Contractor under this Agreement, (ii) Continue this Agreement without terminating the Agreement, or (iii) Temporarily suspend Contractor's performance hereunder, in whole or in part, and recover from Contractor the aggregate sum of;

(1) any amount necessary to compensate City for all the detriment caused by Contractor's failure to perform its obligations or that, in the ordinary course of things, would be likely to result from its failure; and

(2) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California or Federal law.

(b) None of the previous remedial actions, alone or in combination, shall be construed as an election by City to terminate this Agreement unless City has in fact given Contractor written notice that this Agreement is terminated or unless a court of competent jurisdiction decrees termination of this Agreement. If City takes any of the previous remedial actions without terminating this Agreement City may nevertheless at any later time terminate this Agreement by written notice to Contractor.

(c) After the occurrence of an Event of Default, the City, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event

of Default for the account and at the expense of Contractor. However, City must by prior notice first allow Contractor a reasonable opportunity to cure, except in cases of emergency, where City may proceed without prior notice to Contractor. Contractor shall, upon demand, immediately reimburse City for all costs, including costs of settlements, defense, court costs, and attorneys' fees that City may incur in the course of any cure.

(d) No security or guaranty for the performance of Contractor's obligations that City may now or later hold shall in any way constitute a bar or defense to any action initiated by City for enforcement of any obligation of Contractor or for the recovery of damages caused by an Event of Default.

(e) Except where this is inconsistent with or contrary to any provisions of this Agreement, no right or remedy conferred upon or reserved to City is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that City may have otherwise agreed in writing, no waiver by City of any violation or nonperformance by Contractor of any obligations, agreements, or covenants under this Agreement shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by City to exercise a remedy for any violation or nonperformance by Contractor be deemed a waiver by City of the rights or remedies with respect to that violation or nonperformance.

(f) Indemnification. The exercise of City of any one or more of the remedies set forth in this Section 12 shall not affect the rights of City or the obligations of Contractor under the indemnity provisions set forth in Section 4 hereof.

(g) No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle City to exercise any remedy reserved to it in this subsection it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

(h) Notice of Default. Contractor agrees that, as soon as is practicable, and in any event within ten (10) days after such event, Contractor will furnish City notice of any event which is an Event of Default under this Agreement, or which with the giving of notice or the passage of time or both could constitute an Event of Default under this Agreement, which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Contractor proposes to take with respect thereto. Each subcontract shall include the provisions of this subsection (h) to require each subcontractor of Contractor to provide City notice of any Event of Subcontractor Default in the same manner as required hereunder of Contractor for an Event of Default.

### **13. TIME OF PERFORMANCE**

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

### **14. STANDARD OF PERFORMANCE**

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

#### **15. CONFLICTS OF INTEREST**

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

#### **16. CONFLICT OF INTEREST REQUIREMENTS**

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

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

     yes      no (*check one*)

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

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

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

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

## **17. CONFIDENTIALITY OF CITY INFORMATION**

During performance of this Agreement, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City. Contractor agrees to protect all City Information and treat it as strictly confidential, and further agrees that Contractor shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. In addition, Contractor shall comply with all City policies governing the use of the City network and technology systems. A violation by Contractor of this Section 17 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

## **18. CONTRACTOR INFORMATION**

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

b. Contractor shall fully defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Contractor not later than ten (10) days after City is served with any such claim, action, lawsuit or other proceeding, provided that City's failure to provide such notice within such time period shall not relieve Contractor of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

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

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

## **18. FEDERAL PROVISIONS**

Contractor shall comply with the provisions in Exhibit C to this Agreement. In the event of a conflict between any provision in Exhibit C and any other provision of this Agreement, the more stringent provision shall control and prevail.

## **19. GENERAL PROVISIONS**

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. 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 of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, *et seq.*, which require prevailing wages (in accordance with DIR determinations at [www.dir.ca.gov](http://www.dir.ca.gov)) be paid to any employee performing work covered by Labor Code sections 1720 *et seq.* Contractor shall pay to City when due all business taxes payable by Contractor 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 Contractor.

d. Discrimination Prohibited. With respect to the provision of 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.

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

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

g. Incorporation of Attachments and Exhibits. The attachments and exhibits

to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

## 20. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to City that it is (a) a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. 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.

## 21. COUNTERPARTS AND ELECTRONIC SIGNATURES

This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both City and Consultant wish to permit this Agreement and future documents relating thereto to be electronically signed in accordance with applicable federal and California law. Either Party to this Agreement may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to the Agreement. The Parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective Agreement. The City reserves the right to reject any signature that cannot be positively verified by the City as an authentic electronic signature.

Executed as of the day and year first above stated.

### CONTRACTOR:

### CITY OF SANTA ROSA

a Municipal Corporation

Name of Firm: \_\_\_\_\_

TYPE OF BUSINESS ENTITY (*check one*):

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

☐ Individual/Sole Proprietor

Print

☐ Partnership

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

☐ Corporation

☐ Limited Liability Company

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

☐ Other (please specify: \_\_\_\_\_)

*Signatures of Authorized Persons:*

APPROVED AS TO FORM:

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

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

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

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

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

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

\_\_\_\_\_  
Office of the City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk  
[Remove signature block if agreement not  
approved by Council]

City of Santa Rosa Business Tax Cert. No.

\_\_\_\_\_

Attachments:

Attachment One - Insurance Requirements

Exhibit A - Scope of Services

Exhibit B - Compensation

Exhibit C – Federal Provisions

## **Exhibit A**

### **90-day Scope of work (Task 1)**

Scope of work is further defined in Exhibit C and City RFP

**#R161439 General- pertains to entirety of Project – all phases**

1. Provide monthly updates to the City Representative through the duration of the Project.
2. Develop and maintain a project schedule with monthly updates.
3. Attend project meetings and specialty meetings as required.
4. Provide weekly reports of action items and upcoming tasks.
5. Attend all Board and Council meetings with City Staff.
6. Attend and present with City staff at the following public meetings
  - a) Bicycle and Pedestrian Advisory Board
  - b) Board of Community Services
  - c) City Council
  - d) Library Board meetings
  - e) Any community meetings that may be required for the project

### **90-day Scope of work**

1. Strategic Development of Project Scope
2. Develop Project Approach & Sequencing
3. Stakeholder & Community Outreach
4. Project Management Plan

## **Phases 2 and 3 Scope of Work (Tasks 2 and 3)**

### **Phase 2 – Scope of Work**

1. Development of Procurement Strategy and Documents
  - a) Program Criteria and Development
  - b) Development of Strategy and documents
  - c) Procurements

### **Phase 3 – Scope of Work**

1. Implementation
  - a) Provide project management/construction management and oversight services as needed through the design, construction, and initial operations of the new buildings
2. Project close out
  - a) Provide all project documents, correspondence, submittals, RFI's and inspection reports
3. Claims process management, if necessary
4. Inspector of Record, Construction Materials and Special Inspections
5. CASp

### I. General

- A. The Santa Rosa Hearn Community Hub project (“Project”) includes the construction of a “hub” at Hearn Avenue that will include a fire station, community/cultural center, a public library, a community aquatic center and the extension of Dutton Avenue (Project). The Project will be located on parcels at 976, 980 and 1004 Hearn Avenue (all of which the City has recently acquired) and together comprise approximately 6 acres.

### II. Scope of Services

#### A. General

1. Coordinate and collaborate with the City, the City’s consultants, and other project stakeholders as needed in support of the Project.
2. Provide monthly updates to the State Representative through the duration of the Project.
3. Develop and maintain a project schedule with monthly updates.
4. Attend project meetings, including pre-construction meetings, weekly construction meetings, and specialty meetings as required.
  - a) Provide meeting agenda’s and meeting minutes.
5. Project filing in accordance with the City’s retention policy.
6. Provide weekly reports of action items and upcoming tasks.
7. Attend and present with City staff at the following public meetings, including:
  - a) Bicycle and Pedestrian Advisory Board
  - b) Board of Community Services
  - c) City Council
  - d) Library Board meetings
  - e) Any community meetings that may be required for the project

#### B. Strategic Development of Project Scope

1. Hold a Kick-off Conference
  - a) Identify and align project goals
  - b) Identify key project stakeholders and community outreach goals
  - c) Establish protocols, responsibilities, and communications
  - d) Gather information and identify assessments or studies
2. Develop and submit a Concept and Objectives Report, Financial Expectations Report, Procurement Structure and Execution Report

- a) Develop Project concept and objectives including financial analysis and modeling of the new buildings
- b) Manage and schedule meetings and conversations with stakeholders to determine needs
- c) Make recommendations on scope as it relates to target value delivery
- d) Work with City Staff and consultants to establish community needs.
- e) Validate and quantify market feasibility
- f) Perform risk analysis and prepare a financial model of alternatives
- g) Explore additional available funding and financing options
- h) Develop a detailed analysis on the structuring and execution of Project.
- i) Identify and evaluate the interest of potential partners
- 3. Manage the development of overall strategy to obtain all necessary approvals required for constructing the new buildings, including but not limited to:
  - a) Coordination and management of GHD, contracted to complete CEQA for the project
  - b) Coordination and management of the firm selected by the City to provide the architectural/engineering preliminary design, bridging documents and cost estimate
- C. Develop Project Approach & Sequencing
  - 1. Develop procurement methodology recommendations.
    - a) Manage, recommend, and define procurement methodology in consultation with City staff and City's legal counsel for multiple solicitations, including:
      - (1) Abatement and demolition contract.
      - (2) Design-Build project development contract.
  - 2. Prepare solicitation documents and develop criteria for evaluating proposals
    - a) Distribute to City staff for review and incorporate comments
  - 3. Review and evaluate proposals and qualifications in collaboration with City staff
  - 4. Develop interview questions in collaboration with City staff and organize and attend interviews
  - 5. Manage the preparation, coordination, schedule, and review of bridging documents in collaboration with City Staff, Library, Consultants and City's legal Counsel, including but not limited to:
    - a) Distribution to stakeholders for review, combining stakeholder comments for delivery to consultants, and reviewing consultant modifications for conformance with the comments
    - b) Management of stakeholder expectations for conformance with the project budget
- D. Stakeholder & Community Outreach

1. Support the City and the City's consultant is organizing, preparing materials, and facilitating stakeholder and community outreach meetings.
2. Support the City and City's consultants in preparing reports and other materials to facilitate stakeholder and community outreach.

E. Project Management Plan

1. Develop a Project Management Plan, which should include the following at a minimum:
  - a) Governance and decision-making hierarchy
  - b) Communication and meetings protocol
  - c) Project Management mission and goals
  - d) Procurement Strategy and Approach
  - e) Key process, forms, and templates.

F. Task 2 – Development of Procurement Strategy and Documents

1. Program & Criteria Development
  - a) Support the City and the criteria architect to coordinate and facilities meetings with City stakeholders.
  - b) Review the criteria architect's schedule to develop and developer a complete programming and criteria documents.
  - c) Manage the preparation, coordination, schedule, and review of bridging documents in collaboration with City Staff, Library, Consultants and City's legal Counsel, including but not limited to:
    - (1) Distribution to stakeholders for review, combining stakeholder comments for delivery to consultants, and reviewing consultant modifications for conformance with the comments.
    - (2) Management of stakeholder expectations for conformance with the project budget.
  - d) Support the City and the criteria architect in coordinating with authorities having jurisdiction.

### 2. Development of Procurement Strategy and Documents

- a) Manage, recommend, and define procurement methodology in consultation with City staff and City's legal counsel, for the following solicitations:

- (1) Abatement and demolition
- (2) Design-Build project development

- b) Administer Project Labor Agreement compliance and auditing.

- c) Prepare solicitation documents and develop criteria for evaluating proposals.

- (1) Incorporate or reconcile all City comments into the solicitation documents.

### 3. Procurements

- a) Develop market and industry interest for project solicitations.
- b) Support the City in issuing documents for procurement solicitations.
- c) Coordinate and facilitate procurement meetings, interviews, and selection committees.
- d) Review and evaluate proposals and qualifications in collaboration with City staff.
- e) Develop interview questions in collaboration with City staff and organize and facilitate interviews.
- f) Assist City staff and Legal Counsel in negotiating proposed design and business terms with highest ranked proposer.
- g) Assist City staff in developing all necessary contract documents.
- h) Draft City Council contract award staff reports, presentations, and attachments.

### G. Task 3 – Implementation

- 1. Provide project management/construction management and oversight services as needed through the design, construction and initial operations of the new buildings.

- a) Coordinate a kick-off meeting, pre-construction meeting, and weekly design and construction meetings.
- b) Review and provide City recommendations on all post-award submittals.
- c) Provide up to two (2) constructability reviews will be requested when a design phase is close to completion. This review is to include one (1) accessibility review by a CASp.
- d) Coordinate progress plan set reviews with stakeholders.
- e) Manage the development of the new building's performance benchmarks such as energy consumption and space utilization benchmarks.
- f) Ensure the Project's adherence to budget and schedule.
- g) Monitor performance and adherence to executed contracts by the developer team.

- h) Assist City staff in planning a ground-breaking ceremony, including stakeholders, politicians, and press.
  - i) Assist City staff with coordination and attendance at any required public meetings, including but not limited to: Design Review Board and community meetings.
  - j) Review submittals, RFI response, and change orders and provide the City recommendations and a draft response with contract references used and support information for the response.
  - k) Review payment requests, provide recommendations and provide approval and signature when required.
  - l) Coordination with City staff and Contractor and act as the primary contact, and issue notifications to the general public of upcoming road conditions in the work zone area, the safety and mobility impact on the Community, traffic revisions, or lane modifications.
  - m) Support the City in developing work zone public information and outreach strategies to communicate with road users, the general public, area residences and businesses, utilities, schools, and appropriate public entities about project information.
  - n) Support the City in developing monthly updates for the City Newsletter during active construction, a call list creation, public inquiry responses, and general notifications on road changes, which may include emails, mailing notifications letters, and coordinating changeable message signs with Contractor.
  - o) Coordinate with utility companies as applicable to the project.
  - p) Make recommendation to City staff regarding Substantial Completion or Final Completion.
  - q) Coordinate the punch list as each building or project area is near completion and close to public opening.
    - (1) Schedule a punch list walk through with stakeholders.
    - (2) Compile stakeholder punch list comments and deliver to design-builder.
    - (3) Oversee punch list implementation and document completed items.
    - (4) Receive copies of inspection card sign off, inspection.
2. Project Closeout
- a) Provide all project documents, correspondence, submittals, RFI's, inspection reports.
    - (1) Some documents may be required to be hard copies as specified in the City's retention policy.
3. If a claim related to the project is submitted to the City, assist City staff with the claims process.

**4. Inspector of Record, Construction Materials and Special Inspections**

- a) For Construction Management & Inspection, the scope of services should include, at a minimum, Agency Construction Management and Construction Inspection as defined and described in the APWA publication titled, "Management of Public Works Construction Projects". Inspection services shall be in general conformance with the APWA publication, or other infrastructure industry publication with comprehensive guidelines for management and inspection of Public Works projects that is acceptable to the City.
- b) Construction Management weekly project status reports will be submitted to the City by 12:00pm on Monday and inspection reports and weekly statements are to be available upon request. Consultant shall complete the record plans at the completion of the project and provide any documentation for changes to bid set.
- c) Construction inspection shall be daily.
- d) Track all work on the site required for the applicable essential services buildings.
- e) Provide a pre-construction report within 10 days prior to start of construction, including pre-construction photos.
- f) Provide daily inspection reports when construction is active, reports shall be hard copy and wet signed and dated by the inspector, scan final copy to create an alternate pdf electronic version.
- g) Photos shall be taken daily of construction in progress.
- h) The CM&I consultant and all subconsultants may have extensive reporting requirements for the project depending on final sources or funding.

**5. CASp**

- a) Ensure the new buildings' compliance with codes and regulations (100% Americans with Disabilities Act compliant).
- b) A CASp shall provide periodic inspections of construction in progress.

**III. Duration of Services**

- A. This Scope of Services and the associated Fee Summary assume a not to exceed time and materials delivery for a duration of 54 months.

**IV. Clarifications and Exceptions****A. Clarifications**

- 1. Construction Manager and Construction Materials and Special Inspections consultant will be required to provide the following personnel:
  - (1) Construction Manager
  - (2) Inspector of Record qualified for essential services buildings in California (shall apply to the essential services buildings only)

- (3) Special inspector
  - (4) Materials testing services
  - (5) Certified Access Specialist (CASP)
  - (6) Biologist
  - (7) SWPP compliance officer
  - (8) QSD/QSP certified
  - (9) Reviewer of the permits (SMARTS)
- 2. Estimating services will be provided on a time and materials basis. The hours included in the Fee Summary are an estimate, State may request estimating support defined in this Scope of Service or other estimating services on an as needed, time and material basis.
  - 3. The selected Inspection Consultant will be required to complete the conflict-of-interest statement otherwise known as Form 700 after notification of being selected and before notice to proceed.
  - 4. Coordination between the Design Builder and the City. The selected Construction Manager will be the point of contact for the project and directly responsible for the successful delivery of the project with oversight of their team.
  - 5. Field Directives can be provided by the Construction Manager with approval from the City. Change Orders are not finalized or approved until finally signed and executed by the City.
  - 6. The CM&I team will be given authority to work with the Project Manager and various City teams out of the Capital Projects Division (Fire, Traffic, Storm Water, Materials Lab, Parks, Recreation, and outside partners etc.). Those conversations should always copy the internal City Project Manager and any extra work should be directly and immediately brought to the internal City Project Manager
- B. The following services are excluded from the Project:
- 1. Value engineering; and
  - 2. Commissioning.



## Exhibit B

January 31, 2023

Jill Scott  
Real Estate Manager  
City of Santa Rosa  
Real Estate Services  
100 Santa Rosa Avenue  
Santa Rosa, CA 95404

RE: Project Management Services  
Santa Rosa Hearn Community Hub

Ms. Scott,

Thank you for the opportunity to work with the City of Santa Rosa. We are thrilled to provide Project Management Services for the Santa Rosa Hearn Community Hub project ("Project"). The attached Fee Proposal details Kitchell's proposed hours to provide Project Management Services for the Project. Also included, please find a Scope of Services detailing the proposed services for the Project

The total cost to provide Project Management Services for the Project is \$5,812,022. A summary breakdown of this fee can be found below and attached with the Fee Proposal.

Proposal Fee Summary	
<b>Task 1</b>	<b>\$190,834</b>
Labor	\$185,579
Expenses	\$5,255
Consultant	\$0
<b>Task 2 - Task 3</b>	<b>\$5,621,188</b>
Labor	\$3,619,953
Expenses	\$109,015
Consultant	\$1,892,220
<b>Grand Total</b>	<b>\$5,812,022</b>

Our team ready and excited to get to work. If you have any further questions, please feel free to contact me.

Best Regards,

Michael Mallery  
Project Director  
Kitchell CEM  
(530) 683-7083  
mmallery@kitchell.com

**Kitchell CEM**

2450 Venture Oaks Way | Suite 500 | Sacramento, CA 95833 | Phone 916.648.9700 | Fax 916.648.6534 | [www.kitchell.com](http://www.kitchell.com)



Attachments: Fee Proposal, Scope of Services

CC: Bill Johal, Regional Vice President - Northern California, Kitchell CEM  
Don Haase, Sr. Vice President - Technical Services, Kitchell CEM  
Jennifer Frahm, Operations Manager – Northern California, Kitchell CEM

**Kitchell CEM**

2450 Venture Oaks Way | Suite 500 | Sacramento, CA 95833 | Phone 916.648.9700 | Fax 916.648.6534 | [www.kitchell.com](http://www.kitchell.com)

# Cost Proposal

Broken down by Task (Task 1 = Phase1)

Estimate is based on time and materials and is shown as a not to exceed amount of \$5,812,022 for all phases combined



Santa Rosa Hearn Community Cub

Fee Proposal

Proposal Fee Summary				
Description	Start	End	Hours	Amount
<b>Task 1</b>	<b>Mar-23</b>	<b>Jun-23</b>	<b>902</b>	<b>\$185,579</b>
Planning	Mar-23	Jun-23	902	\$185,579
<b>Task 2 - Task 3</b>	<b>Jul-23</b>	<b>Aug-27</b>	<b>19,891</b>	<b>\$3,619,953</b>
Planning	Jul-23	Sep-23	615	\$126,745
Design	Apr-24	Mar-25	4,756	\$840,656
Procurement	Oct-23	Mar-24	1,848	\$335,544
Construction	Apr-25	Aug-27	12,672	\$2,317,008
<b>Grand Total</b>	<b>Mar-23</b>	<b>Aug-27</b>	<b>20,793</b>	<b>\$3,805,532</b>

Expenses Summary				
Row Labels	QTY	Unit	Cost	Amount
Travel	168.0	10,476.0	\$33.75	\$20,370.00
Lodging	467.0	54.0	\$8,100.00	\$70,050.00
Meals	403.0	50.0	\$2,500.00	\$20,150.00
Office Setup	1.0	1.0	\$2,500.00	\$2,500.00
Office Supplies	24.0	24.0	\$1,200.00	\$1,200.00
<b>Grand Total</b>	<b>1,063.0</b>	<b>10,605.0</b>	<b>\$14,333.75</b>	<b>\$114,270.00</b>

Consultant Allowances by QTR				
	Start	End	Amount	Amount with Markup
IOR	Mar-23	Aug-27	\$1,020,000	\$1,122,000
Signet	Mar-23	Aug-27	\$700,200	\$770,220
<b>Grand Total</b>	<b>Mar-23</b>	<b>Aug-27</b>	<b>\$1,720,200</b>	<b>\$1,892,220</b>

<b>Total with Labor and Expenses</b>	<b>\$3,919,802</b>
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<b>Total with Labor, Expenses, and Allowances</b>	<b>\$5,812,022</b>
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Schedule and Phases

	Task 1	Task 2 - Task 3													
Planning	Planning														
Procurement			Procurement												
Design				Design											
Construction								Construction							

Detailed Hours by Phase and QTR

	2023				2024				2025				2026				2027				Total	2023 Rate	2024 Rate	2025 Rate	2026 Rate	2027 Rate	Total Amount
	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3								
Project Director	60	145	111	96	96	112	112	48	48	64	64	56	24	24	24	24	24	32	32	1,196	\$223	\$227	\$232	\$237	\$241	\$273,180	
Sr. Project Manager	160	480	480	480	480	480	480	480	480	480	480	480	480	480	480	480	480	480	320	8,640	\$203	\$207	\$211	\$215	\$220	\$1,821,760	
Project Manager II															480	480	480	480	320	2,240				\$196	\$200	\$444,160	
Sr. Project Engineer				160	480	480	480	480	480	480	480	480	480	480	480	480	480	480	320	7,200	\$130	\$133	\$135	\$138	\$141	\$980,800	
Scheduler	20	22	8	8	8	8	16	24	12		24	24	24	24	24	24	24	24	16	334	\$165	\$168	\$172	\$175	\$179	\$57,554	
Senior Estimator		15	16		40	40		40		8	8	8	8	8						191	\$202	\$206	\$210	\$214		\$39,446	
Architectural Manager							28	84												112		\$204				\$22,848	
Sr. Architect							20	32	16	16	32	32	32	56	96	56	120	80	588		\$184	\$187	\$191	\$195		\$112,808	
Sr. Mechanical Engineer							28	84											112		\$173					\$19,376	
Civil Engineer							16	44											60		\$176					\$10,560	
Electrical Engineer							16	44											60		\$189					\$11,340	
Structural Engineer							16	44											60		\$195					\$11,700	
Total	240	662	615	744	1,104	1,120	1,192	1,392	1,052	1,048	1,072	1,080	1,048	1,048	1,544	1,584	1,544	1,616	1,088	20,793	\$223	\$227	\$232	\$237	\$241	\$3,805,532	

Expenses by QTR

	2023			2024			2025			2026			2027			Total Amount										
	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3							
Travel	\$121	\$1,334	\$728	\$970	\$970	\$1,213	\$970	\$970	\$728	\$485	\$728	\$1,455	\$1,455	\$1,455	\$1,455	\$1,455	\$1,455	\$1,455	\$970							\$20,370
Lodging	\$450	\$2,400	\$1,200	\$1,500	\$1,200	\$1,500	\$1,200	\$1,200	\$900	\$600	\$2,700	\$7,200	\$7,200	\$7,200	\$7,200	\$7,200	\$7,200	\$7,200	\$4,800							\$70,050
Meals	\$150	\$800	\$400	\$500	\$400	\$500	\$400	\$400	\$300	\$200	\$900	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$800								\$20,150
Office Setup											\$2,500															\$2,500
Office Supplies											\$100	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$50							\$1,200
Grand Total	\$721	\$4,534	\$2,328	\$2,970	\$2,570	\$3,213	\$2,570	\$2,570	\$1,928	\$1,285	\$6,928	\$11,205	\$11,205	\$11,205	\$11,205	\$11,205	\$11,205	\$9,605	\$5,820							\$114,270

Consultant Allowances by QTR

	2023				2024				2025				2026				2027				Subt\total	Total Amount				
	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3	Qtr4	Qtr1	Qtr2	Qtr3			2023	2025	2027	2024	2026
Special Inspections and Testing										\$50,014	\$75,021	\$75,021	\$75,021	\$75,021	\$75,021	\$75,021	\$75,021	\$75,021	\$50,018	\$700,200	1.10					\$770,220
Inspector of Record										\$72,858	\$109,287	\$109,287	\$109,287	\$109,287	\$109,287	\$109,287	\$109,287	\$109,287	\$72,846	\$1,020,000	1.10					\$1,122,000
Subt\total										\$122,872	\$184,308	\$184,308	\$184,308	\$184,308	\$184,308	\$184,308	\$184,308	\$184,308	\$122,864	\$1,720,200	1.10					\$1,892,220

Total with Labor and Expenses	\$3,919,802
Total with Labor, Expenses, and Allowances	\$5,812,022

## Exhibit C

### FEDERAL PROVISIONS

#### A. Definitions

1. **Government** means the United States of America and any executive department or agency there
2. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

#### B. Federal Changes

1. Contractor shall at all times comply with all applicable regulations, policies, procedures, and Directives as they may be amended or promulgated from time to time during the term of this Agreement, included but not limited to those requirements of 2 C.F.R. §§ 200.318 through 200.327 and more fully set forth in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, more specifically ARPA awards, which is included herein by this reference. Contractor's failure to so comply shall constitute a material breach of this Agreement.
2. Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### C. Compliance with the Contract Work Hours and Safety Standards Act.

Pursuant to section 3701 of title 40 of the United States Code, this Section C shall apply to Contractor in the event the amount payable under this Agreement exceeds \$100,000 and may involve the employment of mechanics or laborers.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic,

including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**D. Clean Air Act and Federal Water Pollution Control Act**

This Section D shall apply in the event the amount payable under this Agreement exceeds \$150,000.

Clean Air Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that

City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

**E. Suspension and Debarment**

1. This Agreement is a covered transaction for purposes of title 2 Code of Federal Regulations parts 180 and 3000. As such, Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 “Debarment and Suspension.” Contractor agrees that neither Contractor nor any of its third-party subcontractors shall enter into any third-party subcontracts for any of the work under this Agreement with a third-party subcontractor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under executive Order 12549.
3. Contractor must comply with title 2 Code of Federal Regulations, part 180, subpart C and title 2 Code of Federal Regulations, part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
4. This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with title 2 Code of Federal Regulations, part 180, subpart C or title 2 Code of Federal Regulations, part 3000, subpart C, in addition to remedies available to the State of California and the City of Santa Rosa, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

**F. Procurement of Recovered Materials**

1. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
  - (a) Competitively within a timeframe providing for compliance with the Agreement performance schedule;
  - (b) Meeting Agreement performance requirements; or
  - (c) At a reasonable price.
2. Information about this requirement, along with the list of EPA- designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

**G. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by section 1352 of title 31 of the United States Code. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

#### **H. MBE/WBE REQUIREMENTS**

1. Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, through the "Good Faith Effort" process in 2 C.F.R. § 200.321. Contractor shall document and report its Good Faith Effort processes. Contractor shall also ensure that all of its subcontractors take the affirmative steps required under 2 C.F.R. § 200.321. Affirmative steps must include:
  - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
  - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
  - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
  - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
  - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (f) Requiring all subcontractors to take the affirmative steps listed in paragraphs (a) through (e) above.

#### **I. MISCELLANEOUS PROVISIONS**

1. Federal Government Not Party. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
2. False Claims. Contractor acknowledges that Title 31 United States Code Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.

#### **J. Equal Employment Opportunity**

During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment

because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the

administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide City with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of the Agreement. Failure to comply with this Section shall constitute a material breach of the Agreement and subjects the Agreement to immediate termination at the sole option of the City.

**K. Domestic Preference for Procurements**

1. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.
2. For purposes of this clause:
  - (a) Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (b) Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.