

CITY OF SEBASTOPOL



REQUEST FOR PROPOSALS FOR THE EVALUATION OF A POTENTIAL ENHANCED INFRASTRUCTURE FINANCING DISTRICT IN SEBASTOPOL AND WESTERN SONOMA COUNTY, AND THE DEVELOPMENT OF IMPLEMENTATION DOCUMENTS

ISSUED: April 15, 2024

PROPOSALS DUE: May 9 2024, 5:00 PM

All responses must be sent to:

jjay@cityofsebastopol.gov

**John Jay
7120 Bodega Avenue
Sebastopol CA 95472**

Phone: 707-823-6167

**REQUEST FOR PROPOSAL
FOR
FOR THE CITY OF SEBASTOPOL**

The City of Sebastopol, in collaboration with Sonoma County, is soliciting proposals for a qualified consultant to assist with the evaluation and implementation of an Enhanced Infrastructure Financing District.

The purpose of this Request for Proposal (RFP) is to define the City's minimum requirements, solicit proposals, and gain adequate information by which the City and Sonoma County may evaluate the services offered by Proposers.

The City of Sebastopol, hereinafter referred to as the "City", and Sonoma County, hereinafter referred to as the "County", are seeking proposals with the intention of securing a contract with a Vendor who will provide software as well as perform all work required for the preparation. While the City and County are partners in the issuance of this RFP, the City is responsible for all administrative aspects of this RFP.

BACKGROUND

The City of Sebastopol is a small semi-urban community located in California, on the western edge of the Santa Rosa plain. It is 50 miles north of San Francisco and 8 miles west of Santa Rosa. The City, incorporated in 1902, currently has a population of over 7,000 people and serves a trade area population in excess of 50,000 people. The City is located in Sonoma County, which has a population of over 475,000 people. The County is comprised of 9 incorporated cities and large areas of unincorporated territory. The County contains urban, semi-urban, and rural territory.

Sebastopol has a Council-Manager form of government, with five Council members elected at-large. The City has its own Police, Fire, Public Works, Planning, Building, Engineering Departments. The County is governed by a five member Board of Supervisors, who appoint the County Administrator, who is responsible for managing the operations of all county departments.

The City has been exploring the possibility of forming an Enhanced infrastructure Financing District ("EIFD") to pay for qualifying infrastructure projects that provide benefits to the greater community. Sonoma County is partnering with the City in this endeavor, and is providing financial support for the activities described in this RFP. The City and County share the goal of financing capital facilities or other specified projects of community-wide significance that provide benefits to the area within the EIFD's boundaries or the surrounding community.

The City and County are now seeking qualified professionals to assist the parties in evaluating a potential EIFD, including conducting necessary financial and economic analysis to determine the feasibility of a potential EIFD to pay for qualifying infrastructure projects. If the City and County determine that forming an EIFD is prudent and feasible, the Parties may also seek professional assistance on certain actions related to formation of the EIFD.

The City and County are interested in exploring different potential boundaries for the EIFD. Any potential EIFD would include the City of Sebastopol, as well as certain unincorporated

areas of Sonoma County's 5th Supervisorial District. The 5th District encompasses the west county, including the entire Sonoma County coast, and the lower Russian River area. The infrastructure projects to be funded by the EIFD will likely differ depending on the boundaries of the EIFD.

SCOPE OF SERVICES

TASK 1 – Identify Potential Boundaries and Initial Screening Criteria.

1.1 Kickoff meeting. Consultant will coordinate a kickoff meeting with City and County staff to discuss project objectives, schedule, and deliverables.

1.2 Determine boundary scenarios. Identify potential boundaries to study for preliminary screening of eligibility for an EIFD. Chosen boundaries should be easy to understand, either because they correspond with jurisdictional boundaries or significant monuments (such as major roads). Any potential EIFD analysis would include the City of Sebastopol, as well as certain unincorporated areas of Sonoma County's 5th Supervisorial District.

Deliverables: Maps and written descriptions of a variety of boundary scenarios for consideration of an EIFD and concise written explanation for development of boundaries.

1.3 Initial Screening. Using data available from Sonoma County GIS and/or other publicly available data sources, prepare a matrix of primary screening criteria, which may include such items as:

- Current zoning and density in proposed EIFD area (including consideration of anticipated zoning from land use planning updates underway)
- Potential infrastructure financing solutions (property tax capture rate, eligibility for grant funding, etc.)
- Economic Development potential (planned projects, existing parcel values, etc.)
- Technical screening; determine any former RDA project areas, existing ROPs obligations or other bond/financing obligations, EIFD Successor Agency Prerequisites, etc.

Deliverable: Matrix showing screening variables for each boundary scenario.

1.4 Strategic considerations. Identify quantitative and qualitative factors affecting feasibility, which may include:

- Market statistics
- Land ownership (public vs. private)
- Proposed developments
- Anticipated infrastructure investments (public transit, grant-funded projects, etc.)

Use the data to make final recommendations for which boundary scenario(s) should continue into the next phase of analysis as well as determining whether an EIFD district should be studied. Three scenarios will be selected by the City and County for further analysis during Task 2.

Deliverable: Market and future investment analysis

TASK 2- Tax Increment Analysis

This task is focused on determining a range of tax increment funds which could be generated upon formation of a district for the different boundary scenarios selected by the City and County after completion of Task 1.

2.1 Revenue Generation. Key assumptions for the revenue generation analysis include:

- Analysis of potential boundary scenarios.
- Taxing entity proportional shares should be current and come from County Auditor-Controller.
- Include one set of revenues projections with both County and City participation at 25%, 50%, 75%, and 100% of tax increment estimate.
- Project revenues at the 10, 20, 30 and 45-year timeframe.
- Identify the amount of project revenue growth attributable to anticipated new development

Revenue generation assumptions should also meet EIFD criteria and policies adopted by the Sonoma County Board of Supervisors (if any have been adopted). If no criteria or policies exist, assumption should conform to generally accepted practice.

2.2 Bonding capacity. For each scenario, determine the bonding capacity of the EIFD assuming that the governing authority bonds against the future proceeds.

Deliverables: Tax increment revenue and present value analysis.

TASK 3 – Identify Infrastructure Needs

3.1. Identify infrastructure and community development investments. Working with the City and County, the consultant shall determine a range of infrastructure and community development projects/programs, consistent with the regulations for any EIFD, which could make up the funding plan for the EIFD district(s). The projects shall include estimated funding needs and benefits – increased revenue or decreased costs – whenever available.

Deliverable: Summary of potential infrastructure and community investment projects, with an estimated range of costs.

3.2 Identify other funding sources. The consultant shall identify other funding sources that could be leveraged by the EIFD district(s), including grants, special district fees, development impact fees, and other public funding sources including incentive programs, funding sources (including regional, State, and Federal infrastructure funding sources), and/or financing structures and other strategies as may be applicable.

Deliverable: Summary memo providing a rough order of magnitude funding plan for the EIFD district(s), inclusive of projects, project costs and potential funding sources.

TASK 4 – Next Steps for Implementation

Consultant shall prepare a summary memo outlining next steps for implementation, a timeline, and a budget for the implementation activities. The memo should include recommendations for the make-up of a Public Financing Authority if districting is recommended and identify any

other relevant factors such as necessary CEQA review, if any, and community engagement. The memo should function as a realistic action plan for moving forward, and should include an estimated budget.

Deliverable: Next Steps Summary Memo

TASK 5 – Public Outreach

Consultant will assist with preparation and presentation of EIFD feasibility analysis to the public, which shall include attendance at and presentation of the findings at a minimum of four public meetings, such as meetings of the City Council or Board of Supervisors. In addition to providing a presentation, Consultant shall be prepared to engage in a discussion and answer questions from decisionmakers, as well as members of the public. Materials that will be made available to the public at such meetings should also be translated into Spanish.

Deliverable: PowerPoint Presentation.

TASK 6 – Public Outreach

6.1 Prepare Resolution of Formation.

Consultant will prepare draft resolutions of intention for participating agencies in the EIFD to formally establish PFA Board.

Deliverables: draft resolutions for each participating agency.

Final Deliverables:

One (1) electronic copy of all documents (PDF and Word/Excel Versions).
Ten (10) bound hard-copies of Study results.

1.0 PROPOSAL REQUIREMENTS

1.1 Cover Letter

The letter shall be on consultant letterhead and include the consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the consultant's understanding of the services being requested and any other pertinent information the consultant believes should be included. All addendums received must be acknowledged in the transmittal letter. The letter shall be signed by the individual authorized to bind the consultant to the proposal, and shall contain a statement that the proposal is valid for ninety (90) days.

1.2 Executive Summary

1.3 Organization and Approach

- A. Describe your project and management approach to accomplish the Scope of Services of this RFP. Include a description of deliverable and implementation plan.

- B. The Parties will give preference to submittals from consultants that demonstrate they have successfully completed comparable projects regarding the formation of EIFDs. Submittals shall include a detailed description of a minimum of three (3) projects within the past five (5) years involving evaluation or formation of an EIFD, or similar types of projects. The proposal shall demonstrate the proposing consultant's compliance with these requirements, as well as general competence to perform the services of this RFP.
- C. Describe the roles and organization of your proposed team for this project, as well as the qualifications and experience of your team as it relates to this project. Describe the roles of key individuals on the team, as well as the length of employment with the proposing consultant. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of project, and should be committed to stay with the project for the duration of the project.
- D. Provide references from at least three public agencies for which the proposing consultant provided similar services. Reference information should include:
- Agency name
 - Description of services provided
 - Contract start and end dates
 - Agency contract manager name, telephone number, and email address

1.4 Schedule of Work

Provide a detailed schedule for all phases of the project and the proposing consultant's services, including time for reviews and approvals. The Parties would like to begin this project immediately upon award. The City and County desire to complete all work on evaluating the EIFD as soon as possible, and ideally no later than December, 2024.

1.5 Cost Proposal / Estimated Fee

The proposal should contain all pricing information relative to performing the scope of services as described in this request for proposal. The proposed means of compensation, including hourly rates or fees to be charged must be listed. A schedule of rates or amounts for all fees, charges, expenses, and all other costs and/or approximate costs and time associated with the different phases of this project should be included, as well as the total all-inclusive maximum price to be proposed. The proposal should include a schedule of hourly rates for additional services, if applicable.

The cost proposal will be a part of the evaluation criteria, but is not the sole criterion for recommending a contract award.

1.6 Conflict of Interest Statement

The proposing consultant shall disclose any financial, business or other relationship with the City of Sebastopol or Sonoma County that may have an impact upon the outcome of the contract or the construction project. The consultant shall also list current clients who may

have a financial interest in the outcome of this contract or the construction project that will follow. The proposing consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the construction project.

1.7 Litigation

Indicate if the proposing consultant was involved with any litigation in connection with prior projects. If yes, briefly describe the nature of the litigation and the result.

1.8 Contract Agreement

Indicate if the proposing consultant has any issues or needed changes to the proposed Professional Services Agreement included as Attachment B. **No changes outside of those included in the RFP will be considered after consultant selection.**

2.0 SELECTION CRITERIA

The City and County's selection criteria for this work include, but may not be limited to, the following:

- Responsiveness to requirements, terms and conditions of RFP
- The quality of the consultant's response to the RFP and understanding of the scope of services.
- Proven ability to perform in a timely fashion.
- Timeline of implementation and ability to work with City staff
- Costs will be a consideration

Proposal Evaluation and Selection Process: Following the submission deadline, a selection committee will evaluate all responses and may develop a short-list of responders. Responders will be notified and finalists may be invited to present to our staff if necessary. After any/all presentations are completed, the selection committee shall reconvene to either make a decision or to request further information. The selection committee may include staff and/or elected officials from both the City and Sonoma County.

The selection committee will then make recommendations regarding the selection and request authorization to enter into a contract with the approved responder. The committee reserves the right to accept/reject any or all proposals. Submission of a proposal indicates acceptance of the conditions contained in the RFP and an agreement to negotiate a contract for services. An award can be made on the basis of greatest benefit to the Parties.

3.0 GENERAL INFORMATION

3.1 Proposal Due Date

Proposals will be received by the City of Sebastopol **until 5:00 p.m. PST on Thursday May 16, 2024**. All responses must be sent to John Jay in PDF format at jjay@cityofsebastopol.gov

The subject line of the email transmitting the proposal shall be: "Proposal for EIFD Services".

City of Sebastopol is not responsible for proposals that are delinquent, lost, mismarked, send to an address other than that given above, or sent by mail or courier service. The City of Sebastopol reserves the right, after opening the proposals, to reject any or all proposals, or to accept the proposal(s) that is, in its sole judgment, in the best interest of the City of Sebastopol.

3.2 Project Time Schedule

The following is the schedule for consultant selection and project initiation:

Release of RFP: April 15, 2024
Deadline for Questions: April 22, 2024
Final Response to Questions posted: May 2, 2024
Proposal due date: May 9, 2024 5:00 p.m. (PST),
Consultant interviews: May 15 and 16, 2024
City Council award of contract: June 4, 2024

Note, the City reserves the right to modify this schedule, any changes will be posted to the website as listed in Section 3.3.

3.3 Relevant Questions

Any relevant questions concerning the RFP or Scope of Services shall be directed to John Jay at (707) 823 6167 or jjay@cityofsebastol.gov. All communications should be in writing. Any oral communications will generally be considered nonbinding on the Parties. The City will respond in writing to written communications. Staff will post written answers to these questions at the website noted below.

If, in the City's opinion, any such response changes the intent of the RFP, or otherwise would provide an advantage to one proposer over another, an addendum to the RFP will be issued and posted on the City's website at:

<https://www.cityofsebastopol.gov/local-business/doing-business-with-the-city/>

3.4 Additional Information

The Parties reserves the right to change any aspect of, terminate, or delay this RFP, the RFP process and/or the program which is outlined within this RFP at any time, and notice shall be given in a timely manner thereafter.

4.0 CONTRACT TERMS / AGREEMENT

The successful proposer will be required to execute the City of Sebastopol Standard Agreement (see Attachments).

ATTACHMENT A - Standard Professional Services Agreement

5.0 NEGOTIATION OF CONTRACT

After selection of the consultant, the City and the consultant shall negotiate the contract under which the work shall be performed. All items submitted in the consultant's proposal shall be subject to negotiation.

ATTACHMENT A – STANDARD PROFESSIONAL SERVICES AGREEMENT

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on _____ by and between the City of Sebastopol, located in the County of Sonoma, State of California (City), and _____ (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as _____.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services set forth in **Exhibit A, “Scope of Services”** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or **Exhibit A, “Scope of Services”**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of services shall be as identified in **Exhibit A, “Scope of Services”**.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit A, “Proposed Pricing”, attached hereto and made a part hereof. Total compensation shall not exceed a total of \$ _____, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If any charges or

expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the contract price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant.

C. Payment to the Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation insurance, as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(Not required if consultant provides written verification that it has no employees)

4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the City of Sebastopol for review.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City of Sebastopol requires, and shall be entitled to, the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Sebastopol.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

The City of Sebastopol, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.

General liability coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as one of the following ISO ongoing operations Forms: CG 20 10 or CG 20 26 or CG 20 33 (not allowed from subcontractors), or CG 20 38; **and** one of the following ISO completed operations Forms: CG 20 37, 2039 (not allowed from subcontractors), or CG 20 40.

Primary Coverage

For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Sebastopol, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Sebastopol, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance.

Waiver of Subrogation

Consultant hereby grants to the City of Sebastopol a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Sebastopol by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Sebastopol has received a waiver of subrogation endorsement from the insurer. However, the

Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sebastopol for all work performed by the Contractor, its employees, agents, and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Sebastopol. The City of Sebastopol may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City of Sebastopol.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sebastopol.

Verification of Coverage

Consultant shall furnish the City of Sebastopol with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to the City of Sebastopol before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Sebastopol reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance, meeting all the requirements stated herein, and Contractor shall ensure that the City of Sebastopol is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

The City of Sebastopol reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SECTION 8 – INDEMNIFICATION

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such

acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee, or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST

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

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in

the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the “Work Product”) shall belong exclusively to City. The Work Product shall be considered a “work made for hire” within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent, or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF WORK

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this contract, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant's records and design calculations will be available for examination and audit if and as required. The cost of any reproductions shall be paid by City.

SECTION 17 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 18 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
7120 Bodega Ave
Sebastopol, California 95472

To Consultant: Consultant Name
Address
City, State, Zip Code

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 19 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all work in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 20 – ATTORNEY FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be

entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 21 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 22 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 23 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 24 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 25 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 26 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Sonoma. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 27 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 28 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

City:

By: _____

By: _____

Name:

Name: Don Schwartz

Title:

Title: City Manager

Approved as to Form:

By: _____

Name: Larry McLaughlin

Title: City Attorney